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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~230.~~ 36

JOHN L. HURST, PLAINTIFF IN ERROR,

vs.

THE WESTERN AND ATLANTIC RAILROAD COMPANY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

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FILED AUGUST 24, 1874.

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Affirmed
Opinion Dec

SUPREME COURT OF THE UNITED STATES.

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1 Transcript of the record and proceedings in a cause lately disposed of in the United States circuit court for the eastern district of Tennessee, wherein John L. Hurst is plaintiff and the Western & Atlantic Railroad Company, of the State of Georgia, is defendant, to wit:

Prosecution-bond.

In the circuit court of the United States for the eastern district of Tennessee.

JOHN L. HURST
vs.
THE WESTERN & ATLANTIC RAILROAD, OF THE State of Georgia.

Know all men by these presents that we, John L. Hurst & James H. Magill, are held and firmly bound unto the Western & Atlantic Railroad, of the State of Georgia, in the penal sum of two hundred and fifty dollars, to the payment whereof we bind ourselves, and each of us, and each and every of our several heirs, executors, administrators, jointly and severally, firmly by these presents. Witness our hands on this 12th day of January, 1874.

The condition of this bond is such, that the said John L. Hurst has this day filed in the U. S. circuit court for the eastern district of Tennessee the record in a cause removed from the circuit court of Hamilton County, Tenn., in which the said John L. Hurst is plaintiff and the said Western & Atlantic Railroad, of the State of Georgia, is defendant:

2 Now, if the said John L. Hurst shall prosecute said suit with effect, or on failure thereof pay and satisfy all costs that may be adjudged against said plaintiff in said cause; or on failure of said defendant, if convicted, to pay and satisfy said costs, if the said plaintiff s'all pay the same, then this bond to be void; otherwise to remain in full force and virtue.

JOHN L. HURST. [SEAL.]
J. H. MAGILL. [SEAL.]

Attest:
H. M. AIKEN, *Clerk.*

(Endorsed:) No. 545. John L. Hurst versus W. & A. R. R. Co., of Georgia. Prosecution-bond. Filed 12th day of January, 1874. H. M. Aiken, clerk.

Be it remembered that, at a circuit court of the United States began and held for the eastern district of Tennessee, at the court-house in Knoxville, within said district, upon the second Monday, it being the 12th day of January, 1874, the following proceedings were had, to wit:

There being no judge of said court present, the court was opened by Samuel P. Evans, United States marshal for the eastern district of Tennessee.

Came John L. Hurst into court and filed a certified transcript of the record and proceedings in a cause removed from the circuit court of Hamilton County, Tennessee, in which the said John L. Hurst is
3 plaintiff and The Western & Atlantic Railroad is defendant, the said John L. Hurst having executed a bond for the prosecution

of said cause in the sum of two hundred and fifty dollars, with J. H. Magill as his surety upon the same.

STATE OF TENNESSEE:

Pleas at the court-house in the city of Chattanooga, in the 4th, 14th, & 17th districts of the county of Hamilton, and State aforesaid, on the third Monday, being the 18th June, in the year of our Lord one thousand eight hundred and sixty-six, and in the 90th year of the Independence of the United States. Present, the honorable William L. Adams, one of the judges of the circuit court of Tennessee, and assigned to hold the law-court of Chattanooga in the 4th judicial circuit in said State.

Bond to prosecute.

JOHN L. HURST
vs.
THE WESTERN & ATLANTIC RAILROAD, OF the State of Georgia.

Know all men by these presents that we, John L. Hurst and J. W. Gant, are jointly and severally held and firmly bound unto the Western & Atlantic Railroad, of Georgia, in the penal sum of two hundred and fifty dollars, to be void on condition that the said John L. Hurst will with effect prosecute a suit by action of trespass on the case
4 which he this day commenced against the said Western & Atlantic Railroad of Georgia, in the law-court of Chattanooga, for the 4th, 14th, & 17th civil districts of Hamilton County, Tennesee, in case of failure of such prosecution pay and satisfy all costs and damages as may be awarded against him by our said court.

Witness our hands & seals this 9th day of July, 1866.

JOHN L. HURST. [SEAL.]
By Atto. J. H. GANT.
J. H. GANT. [SEAL.]

Summons.—Issued 9th July, 1866.

State of Tennessee to the sheriff of Hamilton County, greeting:

You are hereby commanded to summon the Western & Atlantic Railroad, of the State of Georgia, if to be found in the 4th, 14th, & 17th civil districts of your county, to appear before the law-court of Chattanooga, to be held for the 4th, 14, & 17th civil districts of Hamilton County, at the court-house in Chattanooga, on the 3rd Monday of October next, to answer John L. Hurst of a plea of trespass on the case, to his damage fifty thousand dollars.

Herein fail not, and have you then and there this writ.

C. W. VINSON, *Clerk.*

(Endorsed:) Came to hand same day issued, and executed this writ on J. F. B. Jackson, agent of the depot of the Western & Atlantic
5 Railroad of Georgia, as commanded, on this the 16th day of July, 1866, and returned to office.

C. E. SHELTON, *D. Shff.*

Declaration.—Filed October 16th, 1866.

STATE OF TENNESSEE, *Hamilton County:*

In the law-court of Chattanooga, October term, 1866.

The plaintiff sues the defendant for fifty thousand dollars, as damages for a failure to deliver one hundred and eighty-six bales of cotton, each bale weighing five hundred and twenty pounds, (520,) all of the value of fifty thousand dollars, received by the defendant, as a common carrier, to be carried from Atlanta, in the State of Georgia, to Dalton, in the State of Georgia, and to them deliver the same to the East Tennessee & Georgia Railroad Company, to be by them shipped to Athens, Tennessee, to wit, in the county of Hamilton, aforesaid, for a reward, which the defendant wholly failed to do.

And that also heretofore, to wit, in the county aforesaid, the said defendant was a common carrier of cotton and other goods and chattels for hire, by railroad-cars, from the city of Atlanta, in the State of Georgia, to the city of Chattanooga, in Hamilton County, Tennessee, on and upon a railroad of the defendant. And being such common carrier as aforesaid, on the day and year last aforesaid, the said plaintiff delivered to the defendant one hundred and eighty-six bales of cotton, in
6 the city of Atlanta, in the State of Georgia, to wit, in the county aforesaid, each weighing five hundred and twenty pounds, the property of the plaintiff, of great value, to wit, of the value of fifty thousand dollars, to be taken care of and safely and securely carried by the defendant from Atlanta, in the State of Georgia, to Dalton, in the State of Georgia, and to the city of Chattanooga, in Hamilton County, Tennessee, and then and there to be safely delivered by the defendant to the East Tennessee & Georgia Railroad Company, to be carried by them to Athens, Tennessee, and there to be delivered to the said plaintiff. All of which the said defendant, as such carrier, faithfully promised to do for a reward. Yet the defendant, although it received said cotton to carry safely and securely from *from* Atlanta, Georgia, to Athens, Tennessee, to where it was consigned, and although the defendant, as such carrier, promised and undertook to carry the same as aforesaid, did not safely and securely carry the same, but, on the contrary, the defendant did not deliver said cotton to the plaintiff at Athens, Tennessee, or to the East Tennessee and Georgia Railroad Company for hire, to be by them carried to the plaintiff at Athens, Tennessee, and did not deliver the same to the plaintiff anywhere, but carried the same to Chattanooga, in the county of Hamilton, aforesaid, against the will and consent of the plaintiff. And the said defendant, without the will and consent or order of the said plaintiff, took said cotton of the plaintiff's from the city of Chattanooga, in the county of Hamilton,
7 aforesaid, and carried the same off into the State of Georgia, where the same was wholly lost to the plaintiff by the mere carelessness and improper conduct of the defendant, in unlawfully taking off said cotton without authority or orders so to do from the plaintiff, and keeping and detaining the same from the plaintiff unlawfully, to wit, in the county aforesaid.

And whereas heretofore, to wit, on the day and year last aforesaid, in the county aforesaid, the said plaintiff was possessed, as of his own property, of one hundred and eighty-six bales of cotton, of great value, to wit, of the value of fifty thousand dollars, and being so possessed as aforesaid, the same afterwards, to wit, on the 3d day of May, 1866,

unlawfully came to the possession of the defendant by finding, yet the defendant, well knowing said one hundred and eighty-six bales of cotton to be the property of the plaintiff, and of right to appertain and belong to him, afterwards, to wit, on the day and year last aforesaid, took and carried off said cotton, against the will and assent of the plaintiff, and without any authority or orders from the plaintiff, and disposed of and converted the same to their use, by means whereof the same was wholly lost to the said plaintiff. Wherefore he saith he is injured and hath sustained damage to the amount of fifty thousand dollars. And there' he sues, &c.

J. H. & S. P. GANT, *Attys. for Plaintiff.*

Plea.—Filed October, 1866.

8 And now, at this term of the court, comes the *the* defendant, by their attorneys, Hammond and Mynatt, their attorneys at law, and defends the wrong and injury, when, &c., & for plea and answer in this behalf say they are not guilty of the said supposed trespass in said plaintiff's declaration mentioned, nor are they guilty of the said several supposed grievances as set forth. And of this they put themselves upon the country.

HAMMOND & MYNATT, *Deft.'s Attys.*

And the plaintiffs likewise.

J. H. & S. P. GANT, *Attys. for Plff.*

WEDNESDAY, *Feb'y* 20, 1867.

Law-court of Chattanooga, Feb'y term, 1867. Hon. W. L. Adams, judge, &c.

Order of continuance.

By consent this cause is continued until next term.

THURSDAY, *October* 31, 1867.

Law-court of Chattanooga, October term, 1867. Hon. W. L. Adams, judge, presiding, &c.

Leave for plaintiff to file an additional count to declaration.

Came the parties, by attys., and, on motion of the plaintiff, leave is granted him to file an additional count to his declaration filed in this cause; which is done.

Leave is granted to the defendants to the special term to make defence.

4th count to declaration.—Filed 31 *October*, 1867.

9 And the said plaintiff, by leave of the court first had and obtained for that purpose, files an additional count to his original declaration, and avers that the defendant, on the 20th day of April, 1862, to wit, in the county of Hamilton, and in the 4th, 14th, & 17th civil districts thereof, in the State of Tennessee, was a common carrier, from the city of Atlanta, in the State of Georgia, to the town of Dalton, in the said State, and from thence to the city of Chattanooga, in the county, districts, and State aforesaid and as such common carried it, by its

agent and servants and cars, on said 20th day of April, 1862, and on other days before and since that time, removed 186 bales of the plaintiff's cotton, weighing each 520 pounds, and of the value of fifty thousand dollars, without the consent of the said plaintiff, from said city of Chattanooga, to the city of Atlanta, in the State of Georgia, and as such common carrier aforesaid the defendant wholly failed and refused, when requested, to receive and ship said cotton for the plaintiff from Atlanta, Georgia, to Athens, McMinn County, Tennessee, for a reward; all of which defendant wholly omitted, failed, & refused to do when demanded for that purpose, but suffered and permitted it to remain in the city of Atlanta, Georgia, where it was so taken by defendant, until it was wholly lost to the plaintiff: Wherefore he saith he has been injured and sustained damage to the amount of fifty thousand dollars, and therefore he sues.

J. H. & S. P. GANT,
Attys. for Plff.

10 *Plea.—Filed Dec'r* 30, 1867.

The defendant comes, and for plea to the amended or 4th count of plaintiff's declaration, and for plea says that it is not guilty in manner and form as the plaintiff in his said count in his declaration hath alleged.

HAMMOND & BAXTER,
Atts. for Deft.

FRIDAY, *June* 28, 1867.

Law-court of Chattanooga, June term, 1867. Hon. W. L. Adams, judge, presiding, &c.

Order for continuance.

By consent this cause is continued until Wednesday of the second week of the next term of this court.

WEDNESDAY, *Dec'r* 31, 1867.

Law-court of Chattanooga, December term, 1867.

Came the parties, by attys., and it is agreed by the plaintiff that the exceptions to the depositions of Milton L. Phillips & Charles L. King are well taken. It is therefore ordered by the court that said depositions be suppressed.

Whereupon this cause is continued as upon affidavit of the plaintiff until the next term upon the payment of the cost of this term. It is therefore considered by the court that the defendant recover of the plaintiff and Jesse H. Gant, plaintiff's surety, the cost of this term; for which let execution issue.

And on motion of the plaintiff leave is granted him to retake
11 the depositions of Milton L. Phillips & Charles L. King, and also Henry Goldthwaite, on giving the defendant legal notice of the time and place of taking the same; when taken to be used as evidence in behalf of the plaintiff in this cause.

WEDNESDAY, *January* 1, 1868.

Order of continuance.

By consent this cause is continued until Tuesday of the first week of the next term of this court.

TUESDAY, *Feb'y* 18, 1868.

Law-court, Feb'y term, 1868. Hon. W. L. Adams, judge presiding, &c.

Jury & judgment of court.

Came the parties, by attys., and also came the following jury, to wit: (1) J. B. Allison, (2) H. T. Crosby, (3) J. M. Allison, (4) C. B. Fibleman, (5) Jacob Brout, (6) Jacob Sickleson, (7) W. L. Dugger, (8) M. R. Thurman, (9) G. W. Risted, (10) A. B. Lee, (11) J. E. Bryson, (12) John Jones, all good and lawful men, citizens of the 4th, 14th, & 17th districts of the county of Hamilton, who, being elected, empaneled, sworn, and charged to well and truly try the issue between the parties joined, who, upon their oaths, do say they find the issue in favor of the plaintiff, and assess his damages to eleven thousand six hundred and thirty-seven dollars and fifty cents.

It is therefore considered by the court that the plaintiff recover of the defendant the sum of eleven thousand six hundred and thirty-seven dollars and fifty cents, the damages so found by the jury aforesaid, with all the costs in this cause, for which an execution may
12 issue.

THURSDAY, *Feb'y* 20, 1868.

Motion for new trial and over'uled.

Came the parties, by attys., and the defendant moved the court to shew cause why a new trial should be granted in this cause, and the same being argued and fully understood, it is ordered by the court that said rule be discharged and a new trial refused.

FRIDAY, 28 *Feb'y*, 1868.

Order granting appeal.

Came the parties, by attys., and the defendant moved the court to shew cause why a new trial should be granted in this cause, and the same being argued and fully understood, it is ordered by the court that said rule be discharged and a new trial refused; to which ruling of the court in refusing a new trial, the defendant excepts in law, and here tenders his bill of exceptions in this cause, and prays the same signed, sealed, and made part of the record in this cause, which is done, and prays an appeal in the nature of a writ of error to the next term of the supreme court to be held at Knoxville, Tennessee, the second Monday of September next, which to it is granted on its entering into bond with approved security as required by law. Whereupon R. M. Hooke appeared in open court and acknowledged himself indebted to the plaintiff in the sum of one thousand dollars, to be levied of his
13 goods & chattels, lands, and tenements, &c., but to be void on con-

dition the said defendant prosecutes with effect an appeal this day prayed and granted the defendant to the next term of the supreme court to be held at Knoxville, Tennessee, the second Monday of September next, or, in case of failure of such prosecution, pay and satisfy whatever judgment for costs and damages which may be rendered against it in said cause in the supreme court.

Bill of exceptions.

Be it remembered that, upon the trial of this cause, had on this the 18th day of February, 1868, before the honorable W. L. Adams and a jury of the county, the following proceedings were had, to wit:

The plaintiff had in evidence the depositions of Henry Goldthwait, R. M. McCroskey, Charles L. King, M. L. Phillips, and James Getty's, in the following words and figures, to wit:

(See Henry Goldthwait's deposition on page 70 of this transcript, copied at length; also R. H. McCroskey's deposition on page 48 of this transcript; also Charles L. King' on page 87 of this transcript; also L. M. Phillip's on page 89 of this transcript; also James Getty's deposition on page 88 of this transcript, all copied in full.)

Plaintiff then introduced, as a witness, John L. M. French, who, being duly sworn and examined, deposed and said as follows: (See
14 John L. M. French's testimony on page 44 of this transcript, copied complete.)

This was all the evidence offered in the case on behalf of the plaintiff.

For the defendant, Mr. Wright, Mr. Warnacutt, and Mr. Hammond were sworn and examined in behalf of defendant.

Mr. Wright's testimony.

Mr. Wright said that he knew Mr. McCroskey in Atlanta, Georgia, in 1862. He kept a boarding-house and a commission-house, and kept goods on storage; don't know of his selling cotton on commission.

Mr. Warnacut's testimony.

Mr. Warnacut deposed and said that he knew R. H. McCroskey; that he was in the warehouse and commission business in Atlanta, in 1862. I was never in his house, nor did I do any business with him, but had his card, and understood that he was in that business.

Mr. H. Hammond's testimony.

Mr. Hammond said that he knew McCroskey in 1862; that he had had no business with him. McCroskey held himself out as a commission-merchant and a warehouseman. I have been in this house several times; was in it in May, 1862; don't know as to his reliability; never heard it called in question by the business men of Atlanta; believe he was regarded at the time as a rich man.

15 This was all the testimony offered by the defendant in this case, and, with the testimony above offered by the plaintiff, was all the testimony in the case.

The defendant insisted and requested the court to charge the jury—

1st. That if the Western and Atlantic Road was controlled and operated by General Ledbetter and the military force under his command in the shipment of plaintiff's cotton, the plaintiff would not be entitled to recover.

2d. That French was the lawful custodian of the plaintiff's cotton, and if the order of shipment was addressed to him and not to defend-

ant, the question whether he would obey it or not was one for him to decide, and if in the determination of this question he elected to ship it, the defendant had no right to revise and review his decision, but, as a common carrier, the defendant was bound, when French tendered the cotton, to receive and ship it as directed by French, and being guilty of no wrong in doing so, the plaintiff could not recover damages for making said shipment.

3d. That, as the cotton was consigned to the plf. at Atlanta, if the jury should find from the evidence that the plf. was not in Atlanta to receive it; had no business house there; that he could not be found by defendant, and had made no demand for the cotton or given directions in regard to its disposition, the defendant was authorized to
16 store the same with a responsible and solvent warehouseman for the plaintiff, and the doing so was no act of conversion by defendant, and for this act the plaintiff was not entitled to recover.

4th. That there was no evidence in the law upon which the jury was authorized to find a verdict for the plaintiff on either the 1st, 2d, or 4th counts of his declaration.

The court declined to give the instructions prayed for, and charged the jury as follows:

Charge tc *the court.*

GENTLEMAN OF THE JURY: This is an action brought by the plaintiff against the defendant to recover the value of the cotton mentioned *mentioned* in his declaration. The first, second, and fourth counts mentioned in the declaration *is* abandoned by the plaintiff's counsel in argument, and that being the case you will pay no attention to either.

The third count is a count in trover, and in order to sustain it the plaintiff must prove to your satisfaction that he was the owner of the cotton sued for, and that he was entitled to the possession of it, and that the defendant wrongfully and unlawfully got possession of it, and used and converted it, and so used it as to cause its loss or destruction inconsistent with the rights of the plaintiff and against his consent. If the defendant took possession of the plaintiff's cotton and shipped it from
17 Chattanooga to Atlanta, Georgia, without any authority from the plaintiff, or any person else authorized by him, and against his consent, and it was lost or destroyed by this act, then the defendant is guilty as charged in the third count, and in that case the plaintiff will be entitled to recover the value of his cotton so taken and converted by the defendant at the time they so took and converted it, and interest on the same, if you see proper to give it.

But you will carefully look to all the proof, and determine for yourselves whether the defendant was authorized by the plaintiff or some agent to ship his cotton to Atlanta, Georgia; if it was, then the defendant is not guilty, and you will so find by your verdict. If the defendant shipped it off without any authority from the plaintiff or his agent, and the proof shows that fact, then the defendant is guilty of a conversion of the cotton, and you will so find.

The defendant's counsel insists that at the time the cotton was shipped by the defendant to Atlanta, Georgia, that the defendant's railroad was controlled and operated by the military authorities who then held and occupied the country, and that the plaintiff's cotton was shipped by them over defendant's road under circumstances over which the defendant had no control. Upon this point the court instructs you that if defendant's railroad was at that time controlled and operated by

the military authorities who then occupied the country, and the
18 plaintiff's cotton was shipped off and lost by them, then the defendant would be guilty; but it would be the act of the military authorities and not the defendant's act, and you will look to the proof and see how that fact is, and render your verdict accordingly. But if the proof shews that French was ordered by General Ledbetter to ship the cotton to Atlanta, Georgia, and he hauled the cotton to defendant's depot, in Chattanooga, without having authority from the plaintiff so to do, and the defendant, with knowledge of that fact, shipped off the cotton to Atlanta, both the defendant and French were trespassers and guilty of a conversion of the cotton, and Ledbetter's order conferred on them no authority to do so. He could not legally authorize them to do a wrong or to commit a trespass. But you will carefully look to the proof, and see how these facts are, and render your verdict accordingly. But, as before stated, if French had authority from the plaintiff to ship the cotton to Atlanta, then he had a right to do so, and that was sufficient authority to the defendant to ship it, and in that case the defendant is not guilty. Again, if French was authorized by the plaintiff to ship the cotton to Atlanta, and defendant did ship it, and it was consigned to the plaintiff at Atlanta, Georgia, then it was the duty of the defendant, as a common carrier, if the plaintiff was not there to receive it, to store it away in a safe place, as in a warehouse, for the plaintiff, and if
19 they done that it would discharge them from liability; but if you are satisfied from all the proof that the defendant shipped the cotton to Atlanta rightfully, as I have above instructed you, having authority so to do, as I have shown, or one for him tendered the defendant and requested them to ship it to Athens, Tennessee, the defendant, as a common carrier, would have no right to refuse to receive it and ship it if they had room and capacity to do so, and if they did refuse to receive it when it was tendered to them, when they could have shipped it, then the defendant would be verdict as you believe right, under the proof and instructions I have given you.

W. L. ADAMS, *Judge, &c.*

Defendant moved the court for a new trial, which was refused.

To all which the defendant excepts, and tenders his bill of exceptions, and requests that it be signed, sealed, and made a part of the record, which is done.

From the holding of the court and the judgment rendered in the cause the defendant prays an appeal to the next term of the supreme court of Tennessee, to be holden at Knoxville, on 2d Monday in September, 1868, and the same is allowed on defendant's entering into bond with security as required by the law, which is done.

W. L. ADAMS, *Judge, &c.*

Order supreme court remanding cause.

STATE OF TENNESSEE:

Supreme court at Knoxville.

SATURDAY, *November* 20, 1869.

20 THE WESTERN & ATLANTIC RAILROAD CO., GA., *vs.* JOHN L. HURST. } In error.

In this cause the record having been read and argument of counsel

heard, and it appearing to the court from an examination of the record that there is error in the same, it is therefore considered by the court that the judgment of the law-court of Chattanooga, Hamilton County, be, and the same is hereby, reversed, and the cause remanded; that the plaintiff in error recover of the defendant in error all the costs of this cause, for which execution will issue.

STATE OF TENNESSEE:

I, M. L. Patterson, clerk of the supreme court of Tennessee, at Knoxville, do hereby certify that the foregoing is a full, true, and correct copy of the judgment in said cause, as the same appears of record now in my office.

Given under my hand and the seal of said court, at office in Knoxville, Tennessee, Dec. 21, 1869.

[SEAL.] M. L. PATTERSON, *Clerk.*

MONDAY, *Feb'y* 21, 1870.

Law-court, Chattanooga, February term, 1870.

Order of continuance.

By consent this cause is continued until next term.

MONDAY, *June 20th*, 1870.

Law-court, Chattanooga, June term, 1870.

Came the parties by attys., and came the following jury, to wit: (1) A. R. Thomas, (2) Thomas Daily, (3) J. W. Carlin, (4) J. McCor-
21 mack, (5) J. R. Allison, (6) J. C. Atwood, (7) Russell Thompson, (8) S. H. Cory, (9) Anderson McRay, (10) E. M. Hale, (11) T. R. Harris, (12) M. W. Green, all good and lawful men of the 3d, 4th, 5th, 14th, & 17th districts of the county of Hamilton, who, being elected, empaneled, and sworn to well and truly try the issue between the parties joined, who not having heard all the evidence, the argument of counsel, and receiving the charge of the court, are permitted to separate until the meeting of the court to-morrow morning, 7½ o'clock.

TUESDAY, *June 21st*, 1870.

Finding of jury for defendant.

Came the parties, by attys., and came the same jury, to wit, (1) A. R. Thomas, (2) Thomas Daily, (3) J. W. Carlin, (4) J. McCormock, (5) J. R. Allison, (6) J. C. Atwood, (7) Russell Thompson, (8) S. H. Cory, (9) A. McRay, (10) E. M. Hale, (11) T. R. Harris, (12) M. W. Green, who were, on yesterday, elected, empaneled, and sworn to well and truly try the issue between the parties joined, not having heard all the evidence, argument of counsel, and received the charge of the court, were permitted to separate until the meeting of the court this morning, 7½ o'clock; who now come and resume the further consideration of this cause, and, after hearing all the evidence in this cause, the argument of counsel, and receiving the charge of the court, upon their oaths do say they find the issue in favor of the defendant.

It is, therefore, considered by the court that the defendant recover of the plaintiff and his surety all the costs in this cause, for which an execution may issue.

22 WEDNESDAY, *June 22d*, 1870.

Came the plaintiff, by atty., and moved the court to show cause why a new trial should be granted in this cause.

FRIDAY, *June 24th*, 1870.

Came the parties, by attys., and the rule granted the plaintiff to shew cause why a new trial should be granted in this cause being argued and fully understood, it is considered by the court that said rule be made absolute, the verdict of the jury in this cause set aside and for nothing held, and a new trial granted.

TUESDAY, *November* 15, 1870.

Law-court, November term, 1870, A. A. Hyde, esq., by consent, presiding, &c.

Came the parties, by attys., and also came the following jury, to wit: (1) Uriah Thompson, (2) Ira Wafford, (3) D. R. Rowling, (4) W. A. Hunt, (5) Danl. Hogan, (6) E. G. Crawford, (7) Demsey Hibbs, (8) John Shell, (9) E. T. Sawyers, (10) E. La Gras, (11) Wm. Green, (12) George Ehret, all good and lawful men, citizens of 3d, 4th, 5th, 14th, & 17th civil districts of the county of Hamilton, who, being elected, empanelled, & sworn to well and truly try the issue between the parties joined, *who* not having received the charge of the court, were permitted to separate until the meeting of the court to-morrow morning, 8 o'clock.

Mistrial.

WEDNESDAY, *November* 16, 1870.

23 Came the parties, by attys., and came the same jury, to wit: (1) Uriah Thompson, (2) Ira Wafford, (3) D. R. Rowlings, (4) W. A. Hunt, (5) Daniel Hogan, (6) E. G. Crawford, (7) Dempsey Hibbs, (8) John Shell, (9) E. T. Sawyers, (10) E. La Gras, (11) Wm. Green, (12) George Ehret, who were, yesterday, elected, empanelled, and sworn to well and truly try the issue between the parties joined who, not having received the charge of the court, were permitted to separate until the meeting of the court this morning, 8 o'clock ; who now come and resume the further consideration of this cause, and after receiving the charge of the court, upon their oaths do say they cannot agree, and by consent are discharged and a mistrial entered.

MONDAY, *March 13th*, 1871.

Circuit court, March term, 1871, Hon. John B. Hoyl, judge, &c.

This cause is continued, by consent, until Monday week.

MONDAY, *March* 27, 1871.

This cause is continued, for want of a competent court, until Tuesday of the first week of the next term of this court.

TUESDAY, *July* 11, 1871.

Circuit court, July term, 1871, Hon. Chancellor A. S. Marks, presiding, &c.

Jury No. 4 empaneled.

Came the parties, by attys., and, also, came the following jury, to

wit, (1) Edmond Smith, (2) T. R. Harris, (3) J. C. Roberts, (4) A. C. Thompson, (5) D. B. Hamett, (6) W. J. Manning, (7) W. W. Anderson, (8) A. M. Rogers, (9) P. J. Mathy, (10) Thos. Hartman, (11) J. C. Atwood, (12) E. M. Hale, all good and lawful men, citizens of the county of Hamilton, who, being elected, empaneled, sworn, and charged to well and truly try the issue between the parties joined, *who* upon their oaths do say they cannot agree, and, by consent, are discharged and a mistrial entered.

MONDAY, *November* 13, 1871.

Circuit court, November term, 1871, Hon. John B. Hoyl, judge, presiding, &c.

Order of continuance.

This cause is continued for want of a competent court.

MONDAY, *March* 11, 1872.

Circuit court, March term, 1872, Hon. John B. Hoyl, judge, &c.

Order of continuance.

By content of the parties, and the members of the bar consenting thereto, this cause is continued until Monday two weeks, and set for trial on that day.

TUESDAY, *March* 26, 1872.

Order of continuance.

By consent this cause until Thursday next, and set for trial on that day.

WEDNESDAY, *March* 27, 1872.

T. Richmond, esq., to try cause.

By consent of both parties in this cause, it is agreed that T. Richmond, a practising attor'y at law at this bar, shall and may try this cause, the honorable John B. Hoyl, judge of this court, being incompetent to try the same; and by such consent & agreement of the parties as aforesaid, the said T. Richmond consented to try the cause according to act of assembly in such case made and provided.

THURSDAY, *March* 28, 1872.

Jury empaneled.

Came the parties, by attys., and also came the following jury, to wit: (1) Foly Vaughn, (2) W. H. Powell, (3) P. M. Roberts, (4) Elisha Kirklin, (5) William Conner, (6) John Suttles, (7) Wm. Usrey, (8) Wm. Miles, (9) Jerome Penney, (10) G. W. Sively, (11) J. C. Rogers, (12) Elijah Thurman, all good and lawful men, citizens of the county of Hamilton,

who, being elected, empaneled, and sworn to well and truly try the issue joined, *who* not having heard all the argument of counsel and received the charge of the court, are permitted to separate until the meeting of the court to-morrow morning 8 o'clock.

FRIDAY, *March* 29, 1872.

Jury discharged.—Mistrial entered.

Came the parties, by attys., and also came the same jury, to wit: (1) Foly Vaughn, (2) W. H. Powell, (3) P. M. Roberts, (4) Elisha Kirklin, (5) Wilson Conner, (6) John Suttles, (7) W. Very, (8) Wm. Miles, (9) Jerome Penney, (10) G. W. Sively, (11) J. C. Rogers, (12) Elijah Thurman, who on yesterday, not having heard all the argument of counsel and received the charge of the court, were permitted to separate until the meeting of the court this morning, 8 o'clock, who now come and resume the further consideration of this cause, and after hearing all the argument of counsel and receiving the charge of the court, upon their
26 oaths do say they cannot agree, and by consent are discharged, and a mistrial entered.

MONDAY, *July* 8, 1872.

Circuit court, July term, 1872. Hon. John B. Hoyle, judge, &c.

Order of continuance.

By consent this cause is continued until next Monday week.

MONDAY, *July* 22, 1872.

Hon. E. E. Gillenmater, judge, presiding.

Jury No. 5 empaneled.

Came the parties, by attys., and came also the following jury, to wit: (1) O. A. Shepley, (2) Lewis Smith, (3) Jas. Roper, (4) John Thurman, (5) M. R. Lusk, (6) J. D. Keener, (7) John H. Jones, (8) James Lewis, (9) W. T. Foster, (10) George Price, (11) J. M. Alexander, (12) Howell Barker, all good and lawful men, citizens of the county of Hamilton, who, being elected, empaneled and sworn to well and truly try the issue between the parties joined, *who* not having heard all the argument of counsel and received the charge of the court, are permitted to separate until the meeting of the court to-morrow morning 7½ 'clock.

TUESDAY, *July* 23*d*, 1872.

Finding of jury & judgment of court.

Came the parties, by attys., and also came the same jury, to wit: (1) O. A. Shipley, (2) Lewis Smith, (3) James Roper, (4) John Thurman, (5) M. R. Lusk, (6) J. D. Keener, (7) John H. Jones, (8) James Lewis, (9) W. F. Horton, (10) George Price, (11) J. M. Alexander, (12) How-
27 ell Barker, who on yesterday, not having heard all the argument of counsel and received the charge of the court, were by consent permitted to separate until the meeting of the court this morning, 7½

o'clock, who now come and resume the further consideration of this cause, and, after hearing all the argument of counsel, and receiving the charge of the court, upon their oaths do say, they find the issue in favor of the plaintiff, and assess his damage to the sum of fourteen thousand nine hundred and ninety-six dollars and twenty-two cents.

It is therefore considered by the court that the plaintiff recover of the defendant the sum of fourteen thousand nine hundred and ninety-six dollars and twenty-two cents, the damage so found by the jury aforesaid, with all the cost in the cause not heretofore adjudged, for which an execution may issue.

Thereupon the defendant, by counsel, moved the court to show cause why a new trial should be granted in this cause.

Motion for new trial over'uled.

THURSDAY, *July* 25, 1872.

The rule granted the defendant to shew cause why a new trial should be granted in this cause being argued and fully understood, it is considered by the court that said motion be over'uled and a new trial refused.

To which ruling of the court the defendant excepts in law, and here tenders its bill of exceptions, which are signed by the court,
28 and ordered to be made a part of the record in this cause, and prays an appeal to the next term of the supreme court, to be held at Knoxville, Tennessee, the second Monday of September next, which is granted, the defendant having entered into bond, with approved security as required by law.

We, the Western & Atlantic Railroad, of the State of Georgia, R. M. Hooke, & Jesse A. Glenn, are jointly and severally held and firmly bound unto John L. Hurst in the sum of two thousand dollars, to be void on condition said road prosecute with effect an appeal prayed and granted to the supreme court from the judgment of the circuit court rendered at the July term, 1872, in favor of J. L. Hurst, for damages and cost, or in case of failure of such prosecution, pay and satisfy such judgment for damages & cost as may be rendered against it by the supreme court in said cause.

Witness our hands and seals this 26th day of July, 1872.

W. & A. R. R.,
By J. A. GLENN, *Atty.*
R. M. HOOKE &
JESSE A. GLENN.

Bill of exceptions at July term, 1872.

Be it remembered that the issues in this cause came on and were tried be the Hon. E. E. Gillenmaters, judge, and a jury of Hamilton County, at the july term of the circuit court for said county, begun and held on the second Monday of July, 1872, and continuing from day to day
29 till the present, when the following proceedings were had, to wit:

By consent, the plaintiff read in evidence the testimony of J. L. M. French, given on a former trial of this case, as stated in a bill of exceptions then taken, so far as the same was competent and relevant, which is in the following terms, to wit:

J. L. M. French' testimony.

That in 1862 he kept a warehouse in Chattanooga, and did business as a commission-merchant; that he had 186 bales of cotton belonging to the plaintiff in his warehouse; it came up the river from Alabama upon a steamboat, and plaintiff told me that he intended it for some spinning-factory near Athens, Tennessee; plaintiff directed me to keep it until further orders from him; about 3d May, 1862, I received the order attached as an exhibit to Mr. Goldthwaite's deposition; in obedience to this order I sent the 186 bales of cotton to the Western & Atlantic Railroad depot, with a list or memorandum in writing, directing the deft. to ship said cotton to J. L. Hurst, Atlanta, Georgia. The custom was for merchants to send lists directing where shipments were to be made. I had an order from plaintiff to ship it to Atlanta. I made the shipment under the aforesaid order from Ledbetter, issued by Mr. Goldthwaite. I demanded a receipt from the railroad for the whole 186
bales, but we differed as to the number of bales, I claiming 186
30 and the railroad-agent insisted that he only received 175 bales,
and gave me a receipt for that amount in the following words: (This receipt cannot be found, not in office.) This is all that he would give me a receipt for. In sending up the list I told the clerk to tell them that the military had ordered me to ship the cotton. (This witness was objected to by the defendant, but admitted by the court.) I told them the cotton belonged to Hurst; they knew all about it; they could see from the list of the cotton whose cotton it was. I shipped no other cotton on that day. I don't know that all of the plaintiff's cotton was shipped. I did not see any of it left. The agent told me that he had shipped all of it. There was a good deal of excitement in Chattanooga that day. The Western & Atlantic Railroad runs from Chattanooga to Atlanta, connecting with the East Tennessee and Georgia Railroad at Chattanooga and Dalton, and from these points the East Tennessee and Georgia Railroad connects with Athens. The plaintiff lived near Athens. The business in the office of the Western and Atlantic Railroad ordinarily closed business at from 4 to 5 o'clock, p. m., but kept open to a later hour that evening. It was after 5 o'clock when I got through delivering plaintiff's cotton. I don't remember what cotton was then worth. Mr. Hurst said when he first brought it to my warehouse that
he intended to ship it to Athens. I told the road that the mili-
31 tary had me to ship it. I did not tell them that plf. did not want
me to ship it to Atlanta. They did not know of any opposition to its being shipped to Atlanta. Plaintiff did not give me further orders in relation to the cotton after his original orders.

The defendant, through its counsel, insisted that that part of said French's testimony in the following words, to wit: "In sending up the list I told the clerk to tell them that the military had ordered me to ship the cotton," was irrelevant and incompetent, and requested the court to exclude it from the jury, but the court declined to exclude the evidence, and permitted it to be read to the jury. To the admission of said evidence the defendant then and there excepted.

The plaintiff then read the three depositions of R. H. McCroskey, as follows:

Deposition No. 1.—R. H. McCroskey.

STATE OF GEORGIA,
Fulton County:

Be it remembered that on this the 15th day of February, 1867, I,

Samuel B. Hoyt, a notary public, acting in and for said county and State, by virtue of the power in me vested, and upon notice, caused Robert H. McCroskey to come before me at his own house in the city of Atlanta, in the county and State aforesaid, and took his deposition, to be read as evidence on the trial of a cause now pending in the law-court at
32 Chattanooga, Hamilton County, Tennessee, in behalf of the plaintiff, wherein John L. Hurst is plaintiff and the Western and Atlantic Railroad of Georgia is defendant.

And said witness, being duly sworn, deposed as follows:

Question 1st, by the plaintiff. Please state all you may know about the defendant shipping from Chattanooga, Hamilton County, Tennessee, one hundred & eighty-six bales of cotton, in the month of May, 1862, the property of John L. Hurst, the plaintiff; were you living in Atlanta at the time? Did the defendant have any authority from the plaintiff to ship it from Chattanooga to Atlanta? What became of the cotton at Atlanta? And the defendant took it to Atlanta, what did they do with it? Did they throw it out or did they store it away? If any of it was shipped in the name of J. L. Calhoun, how much of it? What did the cotton average in weight per bale? Was it a good lot of cotton? If Governor Brown, of Georgia, at that time required all cotton to be shipped from the line of said road back to Atlanta; state the fact, and state all he did in respect thereto; and was he, as governor, president of the defendant, and acted as such?

Answer. I lived in Atlanta, Geo., in May, 1862; on the 8th day of May, 1862, I was told by Mr. Hoge, the depot-agent of deft. in Atlanta, Georgia, that there was some cotton at the depot belonging to some
33 Tennesse'ans; & he asked me if I could find stor'ge for it. I replied that I would try. I afterwards, on the same day, received from said Hoge the cotton, consisting of one hundred & eighty-six bales altogether, 35 of which bales were marked J. L. Calhoun, and the remainder were marked J. L. H., except 4 or 5 that were torn so that the mark could not be distinguished. After I had removed said cotton to the warehouse there *was* 32 bales of it burnt on the 10th of May, 1862, before I got it insured. On the 12th of May, 1862, I moved the remainder out of town by order of the confederate authorities, and kept it out of town about six months. I then moved it all in, & put 103 bales in McDaniel & Strong's warehouse in Atlanta, & the balance in my own cellar. Of the part in my own cellar I succeeded in shipping ten bales *of it*, consigned to W. S. Calloway & Daniel Cleage, Athens, Tennessee, which Calloway afterwards informed me arrived at Athens & Riceville, Tennessee. The cotton at McDaniel*s* & Strong's was burned 24th or 25th August, 1864, by a shell from the Federal Army under Gen'l Sherman. The Federal Army, under Gen. Sherman, I was informed, burnt the balance of the cotton that had been in my cellar, and which they had removed to Seage's warehouse in Atlanta. I know nothing about how or by what authority the cotton was shipped from Chattanooga to Atlanta. It was a good lot of cotton. The bales averaged about 500 pounds per bale. All I weighed weighed 500 pounds, and some
34 over that am't. I do not know whether Gov. Brown at that time required all cotton to be shipped from the line of said road or not. Gov. Brown was governor of Georgia at the time, & my information is that he had the appointment of superintendent at that time.

Question 2d. Did you at any time apply to the agent of the road, or to Governor Brown, for permission to ship the cotton to the plaintiff in Tennessee; &, if so, did they refuse to allow it to be shipped, & what were the grounds of the refusal?

Answer. Some time in 1863, the early part, I think, I applied to the agent of the road, Mr. Hoge, in Atlanta, several times for permission to ship said cotton to Tennessee. The first two or three times he asked me to wait, & he thought it could be shipped; & said Hoge did use exertions to have it shipped, as I believe, but the last time I applied to him to get it shipped he replied that it was impossible to get any more of it shipped, for that Gov. Brown had issued an order prohibiting the shipping of any more cotton to Tennessee over the road. The said Hoge said at the time that it was a trick to get cotton up there for the Yankees to get.

Cross-examination:

1 cross-question by D. F. Hammond, defendant's attorney. What day, month, and year did you receive the cotton, and was it in good order when received, & what was the number of bales?

35 Answer. I received said cotton of the 4th of May, 1862. There were 186 bales; four or five bales in very bad order, & the balance only in tolerable order.

2d do. Did you not do everything in your power to save said cotton from waste & destruction?

Ans. I did.

3d. Did not the agent & the officers of the W. & A. R. road tell you every time you applied to them to ship the cotton that they were prohibited from doing so by military orders?

Answer. They did not every time, for they promised, when I first applied, that they would ship it as soon as they could, but the last time they refused, stating that they were prohibited from shipping by an order issued by Gov. Brown.

4th. What was the reason they did not ship the cotton for you at first? Was the road crowded with military stores, &c., so that they could not possibly ship it; and did not Hoge, the agent, do everything in his power to ship; & did you not consent to wait until shipment could be made?

Answer. I think they did not ship at first because the road was crowded with military stores & provisions generally, & preference was given to provisions. Hoge did everything in his power to ship, & would have shipped two car-loads of it on the day appointed for shipment but for the coming out of Gov. Brown's order. I waited because I could not help myself.

5th. What was cotton worth in confederate money at the time
36 you received this cotton, & what was confederate money worth in gold in Atlanta?

Answer. I don't know what cotton was worth. Confederate money about 90 per cent. under par.

In rebuttal:

Did the plaintiff authorize or direct you to ship any portion or all the cotton to other parties, or to himself in Tennessee?

Answer. He did not.

Was or was not the cotton, so far as the plaintiff was concerned, a total loss?

Answer. It was. I further state that, by correspondence with plaintiff, I learned that said cotton was his.

R. H. McCROSKEY.

STATE OF GEORGIA,
Fulton County:

I, the undersigned, do certify that the foregoing deposition of Robert H. McCroskey was taken by me at the time and place mentioned in the caption; that I am not of counsel, attorney, or of kin to either of the parties, nor interested in the cause; that I sealed up the same without being out of my possession, or altered or changed since it was taken & signed by deponent, and I reduced the same to writing myself.

Given under my hand and seal this 15th February, 1867.

S. B. HOYT, [SEAL.]
Notary Public.

Deposition No. 2.—R. H. McCroskey.

Interrogation to be propounded to R. H. McCroskey, of Fulton
37 County, State of Georgia, a witness for defendant in the above-stated case, which interrogatories answers thereto, when made, (if admissable according to law,) are to be read as evidence on the hearing of the above-stated case.

First int. State where you had lived before you moved to Atlanta, Geo., and in what business were you engaged and how long had you known the plaintiff. State when the cotton sued for in this case was delivered to you, and in what business you were then engaged.

Answer. I lived before I moved to Atlanta in Lagrange, Georgia; I was engaged in merchandizing. I had known the plaintiff there about thirty years. The cotton alluded to was delivered to me about the 10th of May, 1862; I was then engaged in the grocery business.

Int. 2. State what instructions you received from the plaintiff about the storage, sale, or disposition of the cotton, and what was said instruction and when given.

Answer. I never rec'd from plaintiff about the storage, sale, or disposition of the cotton any instruction whatever until six or eight months after I rec'd the cotton. Then plaintiff wrote me to see if I could find said cotton; I then informed him that the cotton was stored with me. Plaintiff then wrote me that he would be glad if I would ship it to him, to do which I made several efforts by W. & A. Railroad.

38 Int. 3. State all else you may know that will benefit the defendant.

I sent one car-load of said to the depot to be shipped to plff., and it was loaded in the car to be shipped on the next morning. I was notified that it could not be shipped because of an order from Gov. Brown, & that I must take it away, & I did so, as Judge Hoge said if not taken away he would have to burn it.

Cross-interrogatories:

Int. 1 by plff. Has not your deposition in this case been taken heretofore; and, if so, are the facts therein stated true, and do you adopt your former deposition as containing the facts of the case?

Answer. My deposition has been taken before in this case. The facts therein stated are true, and I do adopt the answers then taken so far as my memory serves me.

2 int. by plff. Who delivered the cotton to you at Atlanta? Who got you to store it away? Was it done at the instance of the defendant's agents? Where did you find the cotton, and in what condition was it when you found it? How many bales of Hurst's cotton did you find? Where did the plff. Hurst live then, and how long after you received

39 the cotton from defendant before you saw Hurst? And state when the cotton was destroyed and in what way. How often did you try to get the agents of the defendant to ship the cotton to Hurst; and if they refused why did they refuse? Could they have shipped it if they had wanted to or tried? Did you store away the cotton by request of Hurst or the defendant's agents? What did the cotton weigh per bale on an average? Did you consider the cotton safe in Atlanta? What did Hurst want to do with the cotton; and what was it worth per pound in Atlanta when you stored it, and also at the time it was burnt up?

Answer. Judge Hoge, agent of the W. & A. Railroad, delivered said cotton to me. He got me to store it away. It was done by Hoge. He was agent of the W. & A. R. R. I found the cotton at the cars on the said railroad, in Atlanta. Some was in bad condition, and some was in good condition. I found one hundred and eighty-six bales of the Hurst cotton. Hurst then lived in Tennessee; I did not see him till after the close of the war. Thirty-two bales of the cotton were burned on the night of the day it was stored with me; the balance was burned a few days before the surrender of Atlanta. I tried ten or twelve times to get the R. R. agents to ship the cotton to Hurst. They refused, be-
40 cause, as they said, if the cotton went to Tennessee, Lincolnites would get it, and they did not intend for them to have it. The railroad could have shipped the cotton if they would or had to do so. I stored away the cotton by request of the agents of the defendant. I think the average weight per bale was about four hundred & fifty pounds. I did consider the cotton safe in Atlanta. Hurst wanted the cotton for the use of the factories in Tennessee, for the benefit of the people of that State. When I stored the cotton I can't say what it was worth, neither can I say what it was worth when burned.

STATE OF GEORGIA,
Fulton County:

Personally before us came R. H. McCroskey, who, being sworn, says that, to the best his knowledge & belief, the answers made here to the foregoing interrogatories are true, as stated.

R. H. McCROSKEY.

Sworn to and subscribed before us June 13, 1870.

A. P. BYINGTON,
Commisr.
THOMAS SPENCER,
Commisr.

Deposition No. 3.—R. H. McCroskey.

Be it remembered that, on this the 16th day of February, 1872, *that* I, Robert A. Johnson, an acting justice of the peace in and for Fulton County, in the State of Georgia, have, by virtue of the power in me vested by law, and in obedience to a notice given for that purpose,
41 caused R. H. McCroskey to come before me, at the court-house, in the city of Atlanta, in Fulton County, in the State of Georgia, and proceeded to take the deposition of R. H. McCroskey, to be sealed, as evidence in the trial of this cause, now pending in the circuit court at Chattanooga, in Hamilton County, Tennessee, on behalf of the plaintiff. And said witness, R. H. McCroskey, being duly sworn, testified.

Quest. 1st by plff. Please state whether or not you ever saw the plaintiff Hurst, or heard from him in any way, after you received said cotton from the railroad at Atlanta; and if you say you did not, then please state whether you made a mistake in your deposition taken on the 13th of June, 1870, when you stated that the plff. wrote you a letter about the cotton some six or eight months after you received the cotton, and if you made a mistake, state how it occurred.

Answer by plaintiff's witness. Witness answers, did not. He answers that he did make a mistake in his answer, 13th June, 1870. Said mistake was made thinking the cotton was David Cleage, and not the cotton John L. Hurst, and have since then found a memorandum-book, which shows that the mistake was made in that way.

42 2d. By same. Were you authorized by the plaintiff Hurst, at any time, to receive his cotton from the railroad and keep it for him?

Answer. He answers, "No."

3d. By same. Did you receive it from Hoge, the agent of the defendant, at Atlanta, at his request, as his agent—as agent of the road—or not?

Answer. He answers, he received the cotton from Hoge, not knowing whose it was.

4th. By same. Did the defendant, or any of its agents, ever look after the cotton or pay any further attention to it after they turned it over to you?

Answer. He answers that they turned it over without any further instructions or attention to it. I tried to take care of it.

5th. By same. Did they do any act to protect or preserve the cotton for Hurst at any time after they turned it over to you? If so, what?

Answer. He answers, they did not do anything.

6th. By same. Did the defendant and its own agents, superintendents, engineers, and conductors, run, control, and manage all the affairs
43 of the defendant all the time in 1862 & 1863, or was it controlled by others? If so, by whom & when?

Answer. He answers, in 1862 it was controlled by the official' of said road, & in 1863 it was controlled in part by the governor of the State, and partly by the officials of the road. Can't say which had the presidency.

7th. By same. Could they or not have shipped the cotton to Hurst if they had tried, or how was that?

Answer. He answers that it might have been done in 1862 and first of 1863; the latter part of 1863 it could not have been done.

Cross-interrogatories by defendant:

Quest. 1st. Have not your answers been taken heretofore?

Answer. He answers, they have.

Int. 2. Are your former answers true or false?

Answer. He answers they are true, with exception referred to and explained.

Int. 3d. Did you not give your testimony orally in the last trial?

Answer. He answers he did.

44 Int. 4. Did you not then swear that Col. Byington did not read you the deposition of June 13th, 1870?

Answer. He answers that I did so swear.

Int. 5. Do you not know that the cotton was shipped to Atlanta under military orders?

Answer. He answers he does not know.

Int. 6. Do you not know that Gov. Brown had under his command in 1862 and 1863 the State troops?

Answer. That he does not remember for 1862, but knows he did in 1863.

R. H. McCROSKEY.

STATE OF TENNESSEE,
Fulton County:

I, R. A. Johnson, a justice of the peace in and for the county of Fulton, State aforesaid, do hereby certify, that in obedience to an order to me directed, in case John L. Hurst vs. Western & A. Railroad, did cause R. H. McCroskey to come before me, and, after being duly sworn, did make the answers hereunto attached, and that said deposition was taken before me, at the court-house in Fulton County, on the 16th day of February, 1872; and that I am not of kin or counsel for plaintiff
45 or defendant, and not interested in said cause.
February 16, 1872.

R. A. JOHNSON,
Justice of the Peace.

The defendant objected to all that part of the 1st deposition of said McCroskey detailing application to Gov. Brown and Hoge, agent of deft., contained in witnesses answer to the 2d interrogatory. But the court permitted the same to be read, except that part of it which expressed the opinion that Hoge made efforts to ship the cotton according to witnesse's request. To this holding of the court, and reading to the jury said evidence, the deft. then and there excepted.

The defendant further objected to the reading of that part of said McCroskey's 3d deposition, in which the witness deposed that deft's. road was controlled 1862 & 1863 partly by the officials and partly by the governor, but the court overruled the objections and permitted the said deposition to be read. To this holding of the court the deft. then and there excepted.

The plaintiff then read in evidence the deposition, of Goldthwaite and R. B. Campbell, in the following words:

Deposition of Henry Goldthwaite.

STATE OF ALABAMA,
Mobile County:

Be it remembered that on this the 4th day of February, 1868, in obedience to a notice thereto attached, and by virtue of the power
46 in me vested by law, I have caused Henry Goldthwaite to appear before me, an acting justice of the peace in and for said county and State, at the court-house in the city of Mobile, in the county and State aforesaid, as a witness on behalf of the plaintiff, in the case of John L. Hurst vs. The Western & Atlantic Railroad of Georgia, now pending in the law-court of Chattanooga, in Hamilton County, Tennessee, and said witness, being first duly sworn by me as required by law in such cases, deposed as follows:

Question 1st, by the plaintiff. Please state where you were on the 1st day of May, 1862, and about that time; and if in the Army, what was your business and appellation?

At Chattanooga, Tenn., as ast. adjutant-genl. on the staff of Brig. Genl. Ledbetter.

Quest. 2d, by the same. Please look at the order given by you to

John L. M. French, dated 1st day of May, 1862, and marked "Exhibit A," and state whether or not it was Genl. Ledbetter's genuine order, executed by you; and, if so, attach it to your deposition.

Answer. The order to John L. M. French, hereto affixed, and marked "Exhibit A," is genuine, and executed by me in obedience to the order of Genl. Ledbetter, then in command at Chattanooga.

47 Question 3, by same. Please state whether or not the cotton mentioned in said order was shipped by the Western & Atlantic Railroad of Georgia from Chattanooga, Tennessee, to Atlanta, Georgia, by virtue of that order; and, if so, who procured the transportation from the railroad authorities?

Ans. To the best of my recollection it was; but I don't recollect who procured the transportation from the railroad authorities.

Question 4. Please state whether or not it was procured by the military authorities?

Ans. I can't recall the name of the officer who arranged for the transportation of this cotton, but Genl. Ledbetter had control of all the roads leading to Chattanooga, and it was upon his order that the Western & Atlantic received this cotton and transported it.

Question 5. Please state whether or not the Western & Atlantic Railroad was under military at that date?

Ans. I can't say that the genl. had actual possession of the road, but any orders sent to the authorities for extra trains, transportation, &c., were promptly obeyed, to the best of my recollection.

Question 6. Please state whether or not all the available transportation of the road at the time was had for the transportation of Government supplies, cotton, &c., and whether or not the

48 cotton would have been shipped but for that order?

Ans. To the best of my recollection, all the Govt. supplies at Chattanooga were being moved away at this time, and it was impossible for individuals to have secured transportation for anything like such an amount of cotton as referred to.

HENRY GOLDTHWAITE.

EXHIBIT A.

H'DQ'RT'S BRIG., E. TENN.,
Chattanooga, May 1st, 1862.

Mr. JOHN L. M. FRENCH:

SIR: The genl. comdg. this post directs me to say that he wishes the cotton (186) bales for Mr. Spurleck to be shipped to Atlanta, either to-day or to-morrow. You will please inform the general when the cotton has been shipped.

Very respectfully,

H. GOLDTHWAITE, *A. A. G.*

STATE OF ALABAMA,
Mobile County:

I, Jesse T. Cain, an acting justice of the peace in and for said county, do hereby certify that the foregoing deposition was taken by me at the time and place mentioned and stated in the notice and caption; that the same was reduced to writing by the witness, Henry Goldthwaite, himself, in my presence; that I am not of counsel, atty., or of kin to either of the parties, nor am I in any way interested in the cause. That,

49 after it was signed in my presence by the deponent, I sealed it up,

without being at all altered or changed, and delivered it up to John L. Hurst, the plaintiff, to be by him carried and delivered to the clerk of the law-court at Chattanooga, Hamilty County, Tennessee.

Given under my hand and seal this 4 day of February, 1868.

JESSE T. CAIN, *J. P., M. C.* [SEAL.]

Deposition R. B. Campbell.

By agreement of parties, the following interrogatories & cross-interrogatories are propounded to R. B. Campbell, to be answered by himself before any notary public, commissioner of Tennessee, or before any justice of the peace, or clerk of any court, upon oath, and when answered, to be certified by the officer taking it, and then sealed up and forwarded to the clerk of the law-court at Chattanooga, in Hamilton County, Tennessee, to be read on the trial of this cause on behalf of the plaintiff, subject only to legal exceptions.

Int. 1 by the plaintiff. Please state, Mr. Campbell, where you lived in May, 1862, and about the 11th day of that month & year, and in what business were you engaged?

Ans. I lived in Chattanooga. Was employed by W. & A. R. Rd. as through-freight agent.

Int. 2d, by same. Do you remember the time the Federal soldiers first came to Chattanooga, about the 11th of May, 1862? If so,
50 please describe the amount & character of the excitement it produced.

Answer. I do remember the first and all the advances made by the Federal Army on Chattanooga. When an advance was made by that Army the excitement was very high.

Int. 3, by same. Please state whether or not, at that time, under the existing excitement among soldiers and citizens, the Western & Atlantic Railroad was used and controlled by the confederate military authorities for the transportation of their soldiers and supplies. Could a citizen or citizens, at that time, have shipped and got transportation for 186 bales of cotton, or any other amount? How many cars would it take to ship that amount of cotton? And who secured the transportation for the plaintiff's cotton to Atlanta? At that time was the road allowed to ship except by order of the military authorities? State what orders or instructions the road had in such emergencies.

Answer. Under such circumstances, the military controlled or had preference of shipments, and no citizen or citizens could make a shipment without permission from the military authorities. Small shipments, however, could be made. It would require about eight cars to
51 ship the amount of cotton referred to above, and no shipments of that extent could have been made without permission at that time from the military authorities. My recollection is that Mr. J. C. Jones (now deceased) got permission from the military to ship the cotton, and by orders from the quartermaster the cotton was received and shipped by the Western & Atlantic Railroad.

Int. 4, by same. State whether or not the East Tennessee & Georgia Railroad at that time ran from Chattanooga to Athens, Tennessee, and also from Dalton, Georgia, to Athens, Tennessee, both connecting with the Western & Atlantic Railroad at those points; if so, could not Hurst's cotton have been shipped to Athens, Tennessee, from Chattanooga as easily as to Atlanta, Georgia? Why was it not shipped to Athens, Tennessee?

Answer. The East Tennessee & Georgia Railroad was running at that

time from Chattanooga & Dalton, & made connection at both points, (Chattanooga & Dalton.) Not being connected with that road, I can't state whether the cotton could have been shipped as easily to Athens, Tennessee, as to Atlanta, Georgia.

Int. 5, by same. Was there any objections to ship cotton to East Tennessee; if so, by whom and for what reasons; and, if so, did the Western & Atlantic Railroad yield to those objections? What was the price of cotton at Chattanooga at that time?

52 Answer. I do not know whether there was objections to shipping cotton to East Tennessee at that time or not, nor do I know what the objections were, if any, nor do I know what the price of cotton was at that time; and further this deponent saith not.

R. B. CAMPBELL.

I, the undersigned, do certify that I took the foregoing deposition on this date; that I am not of kin or counsel in the cause, nor in any way interested in the cause; that it was taken at my office in Hamilton County, Tennessee; that I sealed it up and delivered it to the clerk of the law-court at Chattanooga, Tennessee.

[SEAL.] JOHN D. BLOCKFORD,
Notary Public.

The defendant objected to the reading of that part of Campbell's deposition in relation to the running of the East Tennessee & Georgia Railroad, and of its connecting at Chattanooga & Dalton; but the court overruled the objection, and permitted the same to be read to the jury.

The plaintiff then read the depositions of Mr. Brooks, Charles L. King, and Mr. Gettys, which are in the following words:

Deposition of William M. Brooks.

Be it remembered that on this the 16th day of February, 1872, *that* I, Robert A. Johnson, an acting justice of the peace in and for Fulton County, in the State of Georgia, have, by virtue of the power in me vested by law, and in obedience to a notice given for that purpose,

53 caused William M. Brooks to come before me at the court-house in the city of Atlanta, in Fulton County, in the State of Georgia, and proceeded to take the deposition of William M. Brooks, to be read as evidence on the trial of this cause, now pending in the circuit court at Chattanooga, in Hamilton County, Tennessee, on behalf of the plaintiff; and said witness, being duly sworn, deposed as follows:

Question 1st, by plaintiff. Please state where you lived in May, 1862, and in what business were you engaged while there, and in whose employ were you while there, and how long did you stay there?

Answer. Witness answers that he resided in Chattanooga; he answers he was in the service of the Western & Atlantic Railroad; he answers he removed there and remained in the service of said road until within a short time before the Federal troops came in and caused our removal.

3d, by same. Please state if you remember the time the plaintiff's cotton was shipped from Chattanooga to Atlanta, in the month of May, 1862; if so, by whom was it hauled to the depot; who furnished the cars upon which it was shipped; and, if you know, state by whom transportation was furnished.

54 Answer. He does not remember the date of said shipment, but thinks it was about the time the Federal troops first shelled the

city of Chattanooga. He answers he does not know who hauled the cotton to the depot. He answers he does know who furnished the transportation. It was furnished by orders of military authority—of the confederate authority. Does not know in whose cars it was shipped.

3d, by same. State by whom the railroad and its cars and engines were run and controlled at that time. Did the road have its own superintendent, engineers, & conductors at that time? Who managed, run, & conducted its business, and managed its shipments?

Answer. He answers that the officers of the Western & Atlantic Railroad *was* in charge of said road, they being subject to the control of the military authorities, the military having precedence over individual shipments. The road had a superintendent, engineers, and conductors. The shipment of freight on the W. & A. R. was control'ed by the appointed officials.

4th, by same. Please state whether the railroad agents and hands at Chattanooga knew it was the plaintiff's cotton, and where he lived and where he wanted the cotton shipped to; if so, state all your means of information on that subject. Did you know Mr. Jones, the clerk
55 of French, at that time *at that time*? If so, state all you saw or knew of him doing to get the cotton shipped to Athens, Tennessee, or to keep it from being shipped to Atlanta, if anything; state all he did and at what time he did it; and is he dead or living? Did the agents of the road obey his request, or disregard it? State all about it.

Answer. He does not know what the hands knew about the cotton. He answers he did not know where plaintiff lived at the time; does not know where he wanted the cotton shipped. He answers he did not know Jones as clerk of French, but knew a man by the name of Jones who operated in some capacity for J. L. M. French. He answers he has an indistinct recollection of Mr. French being forced by military requirements to ship cotton from his wareroom, but does not remember the point designated by military order. My impression is that Mr. Jones made some effort to have a lot of cotton shipped in contrary direction than from Chattanooga to Atlanta. Does not know whether Jones is dead or living. Railroad responded directly to orders furnished by military command.

Question 5. In what capacity were you serving the Western & Atlantic R. Road?

Answer. Receiving and forwarding local freights.

Question 6. Did the railroad authorities act in concert with the
56 military authorities in the shipment of that cotton?

Answer. The W. & A. R. Rd. gave preference to the shipments ordered by military commanders; in cases where the supplies of cars were short the r. rd. acted in obedience to military instructions.

Question 7. Do you know of any opposition to the shipment of said cotton by the railroad authorities?

Answer. No.

Cross-interrogatory 1. Did you not give your testimony in this case when it was heretofore on trial?

Answer. Yes.

Int. 2. Did you not then swear that Mr. Jones or Mr. French came to you with two papers or memoranda, one containing a statement of the cotton, and the other a military order for the shipment of cotton?

Answer. I think Mr. Jones brought two or more papers containing possibly a military order and a memorandum of cotton.

Int. 3. Did you not then testify that the cotton was shipped under military orders; was not that the truth?

Ans. I think it was.

Question by plaintiff rebutted.

Was or was not the military order you speak of Mr. French
57 or Mr. Jones bringing you given to Mr. French or the railroad authorities?

Ans. I think the order was given to Mr. French by a military officer, & railroad acted in obedience to instructions.

WM. M. BROOKS.

STATE OF GEORGIA,
Fulton County:

I, R. A. Johnson, a justice of the peace in and for the county of Fulton and State aforesaid, do hereby certify that, in obedience to an order to me directed in case John L. Hurst vs. Western & A. Railroad, did cause Wm. M. Brooks to come before me, and after being duly sworn did make the answers hereunto attached, and that said deposition was taken before me, at the court-house in Fulton County, on the 16th day of February, 1872, and that I am not of kin or counsel for plaintiff or defendant, and not interested in said cause.

R. A. JOHNSON,
Justice of the Peace.

In the law-court of Chattanooga, Hamilton County, Tennessee.

Deposition' of M. L. Phillips, Charles L. King, and James Gettys, sr., witnesses for the plaintiff in the above cause, taken upon notice on the 31st day of January, 1868, at the court-house, in the town of Athens, McMinn County, Tennessee, in the presence of the counsel for the plaintiff.

Charles L. King's deposition.

The said witness, CHARLES L. KING, aged about fifty-five years, being duly sworn, deposed as follows:

58 Question by plaintiff. What were you engaged in about the 3d day of May, 1862?

Answer. In manufacturing cotton-yarns near Athens, Tennessee.

Question. What was cotton worth at Athens, Tennessee, on the 3d day of May, 1862, in good money?

Ans. I think cotton was worth ten cents per lb. at that time.

Question. What was cotton worth at Chattanooga on the 3d day of May, 1862?

Worth ten cents there, less the freight from there here.

Question. What would be the freight from Chattanooga to Athens, Tennessee?

Answer. I don't know, as I never had any shipped from that point in that year.

Quest. How far is it from Chattanooga to Athens, Tennessee?

Answer. It is called fifty-seven miles from Chattanooga to Athens.

Question. What was cotton worth in Atlanta, Georgia, on the 3d May, 1862?

Answer. I think cotton was worth eight cents at that time.

Question. Did cotton increase in value from the 3d May, 1862, on through the summer and fall of 1862?

Answer. Cotton increased in value all that year.
And further this deponent saith not.

C. L. KING.

59 And the said witness, JAMES GETTYS, sr., aged about 68 years, being duly sworn, deposed as follows:

James Gettys', sr., deposition.

Quest. What were you engaged in on or about the 3d day of May, 1862?
Answer. Spinning cotton.
Question. What was cotton worth at Athens, Tennessee, on the 3d day of May, 1862, in good money?
Answer. About ten cents per pound.
Question. What was cotton worth at Chattanooga, Tennessee, on the 3d day of May, 1862?
Answer. About ten cents per lb.
Question. Did cotton advance in price from the 3d day of May, 1862, through the summer and fall of 1862?
Answer. It did advance.
Question. Please state if you know the value of cotton in Atlanta, Georgia, on and after the 3d day of May, 1862.
Answer. I cannot tell the price, but it continued advancing in price.
And further this deponent says not.

JAMES GETTYS.

M. L. Phillips' deposition.

The said witness, M. L. PHILLIPS, aged about 49 years, being duly sworn, deposed as follows:

Question. What were you engaged in about the 3d day of May, 1862?
Ans. I was engaged farming & spinning cotton at the cotton-factory near Athens, Tennessee.
Question. What was cotton worth at Athens, Tennessee, on the 3d day of May, 1862?
60 Answer. I had no *cotton* transactions in cotton at *at* that time in Athens, Tenn. I bought several hundred bales of cotton about the 1st day of April, 1862, at Griffin & Macon, Ga. I suppose that cotton at Athens, Tenn., was worth at that time about 8 cents.
Question. Did cotton advance in price from the time you made the purchase in the spring through the summer of 1862?
Ans. I am of opinion it did, but how much I can't say.
Question. What was cotton worth at Chattanooga, Tennessee, on the 3d day of May, 1862?
Answer. I do not know, as I was not in Chattanooga at that time.
Question. What was cotton worth in Atlanta, Georgia, on the 3d day of May, 1862?
Ans. Not being in the Atlanta market at that time, I am not prepared to say.
And further this deponent saith not.

M. L. PHILLIPS.

The foregoing depositions were taken before me, as stated in the caption, and reduced to writing by the witnesses, and I certify that I am not interested in the cause, nor of kin or counsel to either of the parties,

and that I sealed them up and put them in the post-office, without being out of my possession, or altered after they were taken.

Given under my hand this 31 day of Jany., 1868.

JOHN F. SLOUER,
Clerk Circuit Court McMinn County, Tennessee.

R. B. Campbell's testimony.

Plaintiff then introduced and examined Mr. R. B. CAMPBELL,
61 whose deposition had been previously read, who deposed as follows:

On 3d May, 1862, I was engaged by deft. in the capacity of shipping-clerk of through freights. The Western & Atlantic Railroad was then owned and controlled by the State of Georgia, and by a superintendent appointed by the governor of Georgia.

The plaintiff then propounded to said witness the following questions:

Did or did not the said railroad authorities of the Western & Atlantic road act in concert with the military authorities in shipments from this place from 1st to 3d May, 1862?

(To this question defendant objected, but the court over'uled the objection and permitted the witness to answer it.)

The witness answered, "They did."

The plaintiff then asked said witness the following questions:

Did or did not the Western & Atlantic Railroad, in the shipment of Hurst's cotton, obey the military order directing its shipment?

(This question was objected to, but the objection was over'uled.)

And the witness answered, "Yes; they did."

The plaintiff then asked said witness the following question:

In the shipment of this particular cotton, did or did not the railroad, and its servants or employees, act in concert with the military authorities?

(This question was objected to, but the objection was over'uled by the court.)

And the witness answered, "They did act in concert, and acted
62 willingly at that particular time. That amount of cotton could not have been shipped without a military order."

(To the holding of the court as stated above, and the evidence so admitted, the defendant then and there excepted.)

The plaintiff then propounded the following terms: You have stated that that amount of cotton could not have at that time been shipped without a military order. I wish you now to state whether or not that amount of cotton could not have been shipped was not because the railroad authorities prefer'ed to give the preference to the military authorities over the citizens?

(To this question defendant objected, but the court overruled the objection.)

And the witness answered: "They did give the military preference, and did so willingly and without force."

(To this ruling of the court and the admission of evidence the deft. then and there excepted.)

The said witness then proceeded and said: I knew J. C. Jones, clerk of Mr. French. He is now dead. I made an error in my deposition. In the deposition I stated that J. C. Jones was the clerk at the time the cotton was shipped; but I have since ascertained that he had then left Mr. French. It was Benjamin F. Jones who was then Mr. French's

clerk. It was a party from Mr. French's that got the transportation for the cotton. It was some one from that house, but I don't know who it was.

63 Plaintiff then called Mr. J. L. M. FRENCH, who deposed as follows:

I am the French that had the cotton in store—the plaintiff stored it. He brought it in steamboats from Alabama; he stored it with me till further orders; he was to instruct me what to do with it; I had no authority to do anything with it except as he, the plaintiff, instructed me; I had no connection with the railroad as employee, but was shipping more or less every day. Benjamin T. Jones was then my clerk. He attended to most all my shipments. He is now dead; don't know that he ever tried to get the cotton shipped to Athens. I send up a list and memorandum of cotton with directions to ship it to Atlanta; I shipped 186 bales, but got a receipt for 175 bales only; I shipped by authority of the military order, and would not have shipped it but for this order.

The plaintiff then asked the witness: Did you ship Spurlock's cotton?

(Deft. objected to this question, but the court permitted the witness to answer it.)

And the witness answered: "I did not."

Mr. French then proceeded to say: I was a commission, receiving, forwarding, and storage merchant—commission merchants usually do all of these things. I sent the cotton to the Western & Atlantic Railroad and directed that it be shipped to J. L. Hurst, Atlanta, Georgia.

64 The next day, or a few days after, I wrote to the plaintiff, informing him that I had shipped the cotton to Atlanta, and endorsed the military order under which the shipment was made. I rec'd no reply from the plaintiff; I wrote him by mail, letter prepaid, and addressed to plaintiff at Mouse Creek or Athens. The first place is 63 & the latter is 57 miles from this place. Both are on the railroad, and the mail was then being carried every day. At the time the military order was given to ship the cotton, the Federals were approaching Chattanooga, and came that evening on the opposite side of the river, and shelled the town. One shell went through my warehouse. There was then a good deal of excitement in Chattanooga. I don't know whether the rebels were preparing to evacuate the place or not; I did not consult with the railroad authorities whether I should obey the military order or not; I sent the military order to the deft., with the memorandum to ship, but I did not consult with the authorities of the railroad whether I should obey or not; I decided this question myself; I thought it was my duty to obey it; that it was right for me to do so. I would have kept the cotton but for this order; I had a letter from the plaintiff, objecting to the shipment of the cotton, but I don't remember when I received it; think it was before or just after the close of the war; I mean by the close of the war the surrender of Lee and Johns'on; don't know where the letter rec'd from Hurst is; it is lost, I think;

65 I got it through the mails; I did not then know where the cotton was; I made no enquiries of the road; I left Chattanooga before the Mission Ridge fight, and remained away until after the surrender; I then came here and stayed a few days, and went back to Va., and returned to this place in Nov., 1865. I gave Hurst no notice after I left Chattanooga in Sept., 1863, where I was till I came back; I was in the army; I sent the military order to ship the cotton along with the cotton when I sent the cotton to the railroad to be shipped

in order that the deft. might see the authority by which I shipped it. The Federal forces did not take the town; the authorities of the railroad left with the rebels, and took off what they could, and did not return till after the surrender.

A. Kesterson' testimony.

Mr. KESTERSON, introduced by the plaintiff, deposed: "I lived in Chattanooga in May 3, 1862; cotton was then worth 10 cts. per lb. *at that time* in Chattanooga, in confederate or State money—confederate money was worth in gold 3 for 1. That was about the time the rebels left here; I sold it three for one; don't know who I got my gold from, or who I got my silver from, or who I got my State money from, and can't tell what confederate money was worth in May, 1862; I mean cotton was worth in May, 1862, 10 cents per pound in good money.

J. L. Hurst's testimony.

The plaintiff was then introduced and examined as a witness
66 in his own behalf. He deposed: I am the plaintiff; in the spring of 1862 I had 186 bales of cotton; bought the cotton in Alabama; I commenced marking it "J. L. Hurst, Athens, Tennessee," but had so much of it I quit marking it in full & marked it "J. L. H., Athens, Tennessee;" the largest portion of it was marked "J. L. H." The contract between French and I was, that he should store it till further orders from me; it averaged over 500 lbs. per bale; don't know what cotton was then worth in Chattanooga; it was worth about ten cents per lb. in Athens; I never authorized French or the Western & Atlantic road to ship it; I rec'd a letter from Mr. French a few days after its shipment, endorsing the military order attached to Goldthwaite's deposition, saying the cotton had been shipped to Atlanta; I never paid any more attention to it; never wrote to French about it afterwards; I had been a good deal persecuted about this cotton, and I thought I had better save my life than the cotton; I was arrested in Alabama and Chattanooga about it; I did not notify French of my dissent of cotton shipment, because I was afraid to do it.

Plaintiff's counsel asked whether the plaintiff was a Union man. To this question deft. objected, but the court overruled the objection, and permitted the witness to answer: "I suppose I was known to be a Union man; I was a Union man." Plfs. counsel then asked, "What
67 was your object in marking the cotton J. L. H. & J. L. Hurst, Athens, Tennessee?" To this question defendant objected. The court then stated that the witness might state in addition to the fact that he had marked the cotton to Athens, Tennessee, that the cotton was designed to be shipped to Athens, "if that was the fact," and permitted the witness to answer, who said that it (the cotton) was designed to be shipped to Athens, but the steamer would not undertake to ship it further than Chattanooga; promised to take it further if he could, but when he got to Chattanooga, said he could not take it further.

As soon as I felt safe to repudiate the shipment, shortly before bringing this suit, I sent an agent to Atlanta to make a compromise with the road. I never wrote to McCroskey about this cotton till about the time I commenced this suit, when I wrote to him for information. I was arrested in Chattanooga on street for being out too late, but kept all night on account of cotton. I was not in Atlanta to receive the cotton and had

no agent there to act for me. Never authorized McCroskey to act for me, and never wrote on the subject till about the time I commenced this suit.

The defendant then read from a former bill of exceptions, by consent, the following evidence given in on that trial, to wit:

Mr. Wright said that he knew R. H. McCroskey in Atlanta,
68 Geo., in 1862. He kept a boarding-house and a commission-house, and kept goods on storage. Don't know of his selling cotton on commission.

Mr. Warnacutt deposed and said that he *he* knew R. H. McCroskey; that he was in the warehouse and commission business in Atlanta in 1862. I was never in his house, nor did I do any business with him, but had his card, and understood that he was in that business.

Mr. Hammond said that he knew Mr. McCroskey in 1862; that he had had no business with him. McCroskey held himself out as a commission-merchant and warehouseman. I have been in his house several times; was in it in May, 1862. Don't know as to his reliability; never heard it called in question by the business men of Atlanta. Believe he was regarded at that time as a rich man. This was all the evidence in this case.

The defendant requested the court to charge the jury—

That if the jury should find that the plaintiff stored the cotton in controversy with French, a commission and forwarding merchant, and that Genl. Leadbetter's order to ship the cotton, shown in evidence, was directed to French and *sed* to the defendant, the responsibility of determining whether he would or would not obey the order was with

French, and if he decided to obey it and tendered the cotton
69 to deft. for transportation to Atlanta, the defendant had no right to review and reverse French's decision, but that deft. was bound to receive and ship it according to French's directions. And if deft. did this, deft. was guilty of no wrong or conversion for so doing, and is not, therefore, liable in damages for doing so.

2d. That if the jury shall find that French, as plaintiff's agent, was acting under an emergency not contemplated by the parties at the time plaintiff stored the cotton with French, to wit, the order of Genl. Leadbetter, mentioned in the evidence, and that French acted in good faith for Hurst's benefit, and that he, French, reported his action by letter, as has deposed to Hurst, Hurst was bound to have replied within a reasonable time, repudiating or dissenting from said shipment, and if he failed to do so the law presumes that he ratified the act, and that in this view and in this state of facts the receipt and transportation of the cotton by deft. to Atlanta was not wrongful, and no recovery can be had by plaintiff for said receipt and shipment.

3d. That if the jury shall find that, when the cotton in question was carried by deft. to Atlanta, the plaintiff to whom it was consigned was not there to receive it, and that after diligent enquiry the plaintiff could

not be found, and that he had no agent there to act for him, and
70 that plaintiff had given no directions as to the disposition to be made of it, the defendant had the right to turn the cotton over to any responsible warehouseman for and on plaintiff's account; and if the defendant did thus, it discharged itself of liability; its said action was not a conversion of the property, and no recovery can be had therefor by the plaintiff.

4th. That if the jury shall find that the plaintiff wanted the cotton shipped to himself at Athens, and that deft.'s employees, or any of them, knew the fact, yet if French, plaintiff's agent, in submission to Genl.

Ledbetter's order, directed to ship it to Atlanta, and delivered it to the deft. for that purpose, & directed its shipment to Atlanta and not to Athens, the deft. had no right to revise and review French's decision and transport the cotton to Athens, but was bound to receive and ship in accordance with French's order, and it is guilty of no conversion for having done this, and no recovery can be had on that ground.

5. We ask the court to take from the jury all evidence tending to show that the State of Georgia, or the employees or officers of the defendant, willingly or unwillingly co-operated with the rebellion or with the rebel authorities, and to instruct the jury that such willing co-operation by Georgia, or by said officers or employees with rebels, or with the rebellion, will not render the defendant liable in this action, pro-
71 vided is not liable on the principles which the deft. has asked the court to charge as is heretofore stated that there is no evidence adduced in the cause to authorize a verdict for plaintiff on the 1st, 2d, or 4th counts of his declaration.

The court declined to give the instructions as requested, and charged the jury as follows:

Charge of the court.

Railroads as common carriers are held to a high order of dilligence in conveying goods. If goods are lost by them in the conveying they will be held liable, unless they show that the loss was not by reason of any neglect on their part. In the case before us, however, there is no question as to diligence or want of diligence in the carrying, and more need be said by the court as to this.

One with whom goods are left for safe-keeping merely may do with such goods what is necessary to this end. He may remove such goods from his warehouse a place of deposit, if necessary to their safety or preservation. He cannot convert them to his own use or of another. His business is to preserve them, to save them from destruction or loss, and to this end he may remove them, if need be, though there is no express authority from the principal to do so. His authority goes to whatever is necessary to the purpose of the deposit, the safety of
72 the goods, including all emergencies and necessities not contemplated in the original deposit, and in thus handling the goods the agent will be guilty of no wrong, and will not transcend his authority.

In this case, if the proof is that Mr. French was the agent of plaintiff; that as such he had the custody of the cotton in controversy for its safe-keeping; that for this purpose it became necessary to remove it; that he did so through defts. as a common carrier, then there is no liability by reason of the shipment by defts.

When goods are tendered for shipment, and there is no notice, actual or constructive, of fraud to the carrier, he may accept and carry them without making enquiry as to the right of the party to order or make the shipment, and in so doing will incur no liability, though the party tendering them acted in fraud of the rights of the owner. I mean he incurs no liability by reason simply of the fraud or wrong of the other. But common carriers, as well as others, must act in good faith toward the principal in dealing with the agent as such. However, in this case, if the shipment of the cotton was by French, as the agent of plaintiff, but was without authority, expressed or implied; was in violation of the rights of his principal, and a perversion of the purposes of the
73 deposit, and these were known to defendant—that is, that the proposed shipment was unauthorized & fraudulent as to plff., and

they, defts., with this knowledge accepted of the cotton and made the shipment to Georgia, and the cotton was lost, defts. are so far a party to the wrong as to render them liable. What is said of the liability of the deft. by reason of co-operation with the agent, is based upon the idea of fraud on the part of the agent and knowledge of this on part of deft. in co-operation with him in making the shipment.

Or if the proof is that the cotton was consigned to plff. at Athens, Tennessee, but was temporarily on deposit with French, to be kept by him for shipment to that place, but by him was consigned to plff. at Atlanta, Georgia, and by him tendered to defendant for shipment accordingly; that defts. knew of this want of authority and fraud as to the rights of plaintiff, but nevertheless accepted the cotton and made the shipment, and the cotton was lost as a result, defts. are liable.

But if the proof is that French was the agent of plff.; that a military order was addressed to him alone, ordering the shipment; that he, French, elected to obey the order and make the shipment, defts. were not bound to reverse his decision, nor enquire into the authority of the military, nor the propriety of the election by the agent, but might make the shipment, and in so doing incurred no liability except as in
74 ordinary cases of shipments. If this was the transaction complained of relative to the shipment of the cotton, plaintiff will not recover; but if the proof is that there was collusion between deft. and French, agent of plaintiff, or between them and the military, or between deft. and the military, to ship this cotton in the interest of another party, knowingly ignoring the rights of plaintiff, and in fraud of his rights, and that the shipment was made accordingly under such collusion, and the cotton was lost, all thus colluding and taking part in the shipping are liable. If Mr. French, as the agent of plff., directed or ordered the shipment to Athens, Tennessee, but deft., in disregard of such orders, shipped the cotton to Atlanta, Georgia, and the cotton was lost, plaintiff may recover.

If proof shows that such was the transaction complained of and such the result, plff. may have verdict for the loss. If the proof is that the shipment was by French, as agent of plff., but acting under an emergency, a condition of things, a new and unexpected circumstance not contemplated in the original deposit by plff., and he, French, notified plff. of his doings in the premises, and plff. failed to disapprove or repudiate the act within a reasonable time, it will be taken that he did ap-
75 prove it, and will not now be allowed to *to* complain. If these are the facts, plff. will no recover.

If the shipment was rightful on part of deft. and the cotton was consigned to plff. at Atlanta, Georgia, but no one could be found, after diligent search and enquiry by deft., authorized to receive it in interest of plff., and there was no direction as to delivery, then deft. might turn it over to any responsible warehouseman, and in so doing would be guilty of no wrong which would authorize a recovery.

The unlawful turning of the goods of another to one's own use, or the use of another, is a conversion. Any diversion exercised over property subversive of the rights of the true owner is evidence of a conversion. In case of attest by the agent, and notice to the principal, the latter is not required to repudiate the act within a reasonable time *within a reasonable time*, but he may sue and recover for the conversion if he so elects. Any evidence now before you, tending to show that the State of Georgia, or the employees of deft., co-operated with the rebellion is withdrawn, except such, if any there be, which tends to show co-opera-

tion by deft. with the rebellion, or any party or cause, in fraud of the rights of plff. in the shipment of the cotton in controversy.

The political relations of the parties must have nothing to do with the case, except as they may aid in a better understanding of the
76 legitimate facts and circumstances of the case.

After the court concluded its charge the plaintiff's counsel requested the court to instruct the jury that they could return a general verdict for the plaintiff. In reference to this request, the court said to the jury that, if they find for the plaintiff, they could return a general verdict upon the declaration, without specifying the count on which they found it.

Under the foregoing instructions the jury find for the plaintiff, and assessed his damages to $.

The defendant thereupon moved for a new trial, which the court refused, but overruled the motion, and rendered a judgment for the plaintiff in pursuance of the verdict.

To all which the deft. excepted, and tenders this its bill of exceptions, which is signed and sealed by the judge, and made a part of the record of this cause.

And from the judgment rendered as above the deft. prays an appeal, in the nature of a writ of error, to the next term of the supreme court of Tennessee, to be held at Knoxville; which appeal is allowed, on defendant's entering into bond, with security, for its appeal, as required by by law.

E. E. GELENMATERS,
Judge, &c.

Deposition Walter T. Miller, New York City.

77 WALTER T. MILLER, of the age of 38 years, or thereabouts, being first duly sworn to testify the truth, the whole truth, and nothing but the truth, relating to said cause and matter, and carefully examined, deposed and says: That he is a cotton-broker in said city, of 24 years' and more experience; that he is familiar with the prices of cotton in this market for several years last past. The price of the best quality of cotton in this market on the second day of May, 1862, was as follows: Good middling, which is about as good quality as we then received, was worth 31 cents a pound; middling was then worth 27 to 28 cents; low middling was then worth 26 cents. I could not tell what was the worth of qualities superior to good middling, as it was not in the market.

WALTER F. MILLER.

Deposition of Chas. A. Easton.

CHARLES A. EASTON, of said city, of the age of 35 years, being duly sworn and examined, as aforesaid, says: That he is a cotton-broker in said city, of 19 years' experience, & is familiar with the prices of cotton in New York market for the latter period; that he has read the foregoing deposition of Walter F. Miller, & fully concurs with him as to the prices of cotton in this city during the time above referred to.

CHAS. A. EASTON.

Order remanding cause from supreme court.—Filed Nov. 22, '72.

STATE OF TENNESSEE:

78 Supreme court at Knoxville, Sept. term, 1872, October 26, 1872.

WESTERN & ATLANTIC RAILROAD OF Georgia *vs.* JOHN L. HURST. } In error.

The record having been read and argument of counsel heard, and the court being of opinion that there is error in the record of the court below, it is considered by the court that the judgment of the circuit court of Hamilton County in this cause be, and the same is hereby, reversed, and the cause remanded to said circuit court for a new trial; and that the plaintiff recover of the defendant in error the costs of the cause in this cause, for which execution will issue.

STATE OF TENNESSEE:

I, J. F. Deadrick, clerk of the supreme court of said State, at Knoxville, do hereby certify, that the foregoing is a full and true copy of the judgment pronounced by the said court in the cause therein named, at its supreme term, 1872, as the same appears of record in my office. Given under my hand and the seal of said court at office in Knoxville, this 13 day of Nov., 1872.

[SEAL.] J. F. DEADRICK, *Clerk.*

MONDAY, *March* 10, 1873.

Circuit court, March term, 1873. Hon. John B. Hoyl, judge, &c.

Order of continuance.

79 By consent, the trial of this cause is continued until Monday of the third week of the present term of the court.

FRIDAY, *March* 28, 1873.

Order of continuance.

This cause is continued until the next term for want of a competent court.

WEDNESDAY, *Nov.* 12, 1873.

Circuit court, Nov. term, 1873, Hon. John B. Hoyl, judge, &c.

Order filing petition to remove cause to U. S. court.

Came the plaintiff, by atty., and asked leave of the court to file his petition in this cause praying to remove this cause to the next term of the circuit court of the United States to be held at Knoxville, Tennessee, for the eastern circuit, district of Tennessee, and to file his bond

with security, as prescribed by act of Congress, in such case made and provided, and the plaintiff is allowed to enter his motion to so remove this cause and file said petition and bond, but as the court is incompetent, it is ordered that said motion stand continued until the next court.

Petition.—Filed Nov. 12, 1873.

To the honorable John B. Hoyl, judge of the fourth judicial circuit in the State of Tennessee, now presiding and holding the circuit court for the county of Hamilton, in the city of Chattanooga.

The petition of John L. Hurst, a citizen of McMinn County, Ten-
80 nessee, respectfully represents and shows unto your honor that your petitioner, on the 9 day of July, 1866, brought suit in the circuit court of Hamilton County, Tennessee, against the Western & Alantic Railroad Company, of the State of Georgia, a corporation organized and doing business under the laws of the State of Georgia, as common carriers, with their principal office located in the city of Atlanta, Georgia, for the sum of fifty thousand dollars, as damages, for 186 bales of cotton, the property of your petitioner, which was wrongfully delivered to and received by said railroad company, as such common carriers, to be by them transported from Chattanooga, Tennessee, to Atlanta, Georgia. Said cotton was delivered to and received by said railroad company under the orders of the late rebel military authority colluding with said railroad company without the knowledge or authority of your petitioner, which cotton the said railroad company alleges was destroyed by the military forces of the United States in the city of Atlanta, Georgia.

Your petitioner further shows that said suit is still pending and undetermined in said circuit court of Hamilton County, Tennessee, and that the matter in controversy in said suit, exclusive of costs, exceeds the sum of five hundred dollars, and that at the time of the commencement of said suit your petitioner was and still is a citizen of McMinn County, Tennessee, and the deft., the said railroad company, then and still
81 has its principal office in the city of Atlanta, Georgia, and was then and now is a citizen of the State of Georgia. And your petitioner further showeth unto your honor, that he has reason to believe and does believe that, from prejudice against his said claim, he cannot obtain justice in said suit in the State courts. And your petitioner would further show, that said suit was commenced in a State court against a railroad company as common carrier for damages for loss, conversion, or destruction of a lot of cotton delivered to said railroad company, and said loss was occasioned by the forces of the United States or by an officer in command of said forces in the late rebellion, and your petitioner therefore prays that said suit may be removed, under the provisions of the act of Congress passed on the 22d January, 1869, and other previous acts of Congress in this behalf, from said circuit court into the United States circuit court for the sixth circuit, and district of Eastern Tennessee, at Knoxville. And your petitioner here offers good and sufficient security for entering in said United States court, on the first day of the next term thereof, with copies of all process, pleadings, depositions, testimony, and other proceedings in the cause, and prosecuting said suit as required by law; and as in duty bound your petitioner will ever pray.

J. H. HURST, Sr.

STATE OF TENNESSEE,
McMinn County:

82 This day personally appeared before me, J. H. McGill, John L. Hurst, the petitioner in the foregoing petition and made oath

that the facts stated in the said petition are true to the best of his knowledge, information and belief.

J. L. HURST.

Sworn to and subscribed before me the 6th day of November, 1873.
J. H. McGILL, *J. P.*

Bond to prosecute.—Filed Nov. 12, 1873.

STATE OF TENNESSEE,
Hamilton County:

Circuit court, Nov. term, 1873.

We, John L. Hurst, as principal, and J. H. McGill, as security, acknowledge ourselves indebted to the Western & Atlantic Railroad Company of the State of Georgia, in the penal sum of five hundred dollars, for which, well and truly to be made, we bind ourselves, our heirs, and legal representatives, signed, sealed, and delivered this 6th day of November, 1873.

The condition of the above obligation is such, that whereas the said John L. Hurst has heretofore brought a suit in the circuit court of Hamilton County, Tennessee, against said railroad company, of the State of Georgia, for fifty thousand dollars as damages, which is now pending and undetermined in said court: And whereas, the said John L. Hurst has filed a petition in said cause, in conformity with the acts of Congress in such cases provided, for the removal of said cause from said circuit court of Hamilton County, Tennessee, to the next circuit court of
83 the United States, to be held for the eastern district of Tennessee, at Knoxville:

Now, if the said John L. Hurst shall enter, in said United States court, on the first day of the next term thereof, copies of all process, pleadings, depositions, testimony, and other proceedings in said suit, and prosecute said suit, and do all such acts in relation thereto as are required to be done upon the removal of a suit into the United States circuit court under the acts of Congress, or upon failure thereof pay all such costs and damages as may be adjudged against him, and in that event the foregoing obligation shall become null and void; otherwise to remain in full force and effect.

J. L. HURST. [SEAL.]
J. H. McGILL. [SEAL.]

Signed, sealed, & delivered in presence of us, day & date above—
J. A. GOULD & JOSEPH NEIL.

MONDAY, *November* 24, 1873.

Order court transferring cause U. S. court.

On this the 24th day of November, 1873, came the parties by attorneys, and both parties waived the incompetency now sitting, and agree that he shall act on the plaintiff's motion heretofore entered at the present term of the court to remove this cause from this court to the next term of the circuit court of the United States for the sixth circuit and district of Eastern Tennessee, at Knoxville, according to an act of

with security, as prescribed by act of Congress, in such case made and provided, and the plaintiff is allowed to enter his motion to so remove this cause and file said petition and bond, but as the court is incompetent, it is ordered that said motion stand continued until the next court.

Petition.—Filed Nov. 12, 1873.

To the honorable John B. Hoyl, judge of the fourth judicial circuit in the State of Tennessee, now presiding and holding the circuit court for the county of Hamilton, in the city of Chattanooga.

The petition of John L. Hurst, a citizen of McMinn County, Ten-
80 nessee, respectfully represents and shows unto your honor that your petitioner, on the 9 day of July, 1866, brought suit in the circuit court of Hamilton County, Tennessee, against the Western & Alantic Railroad Company, of the State of Georgia, a corporation organized and doing business under the laws of the State of Georgia, as common carriers, with their principal office located in the city of Atlanta, Georgia, for the sum of fifty thousand dollars, as damages, for 186 bales of cotton, the property of your petitioner, which was wrongfully delivered to and received by said railroad company, as such common carriers, to be by them transported from Chattanooga, Tennessee, to Atlanta, Georgia. Said cotton was delivered to and received by said railroad company under the orders of the late rebel military authority colluding with said railroad company without the knowledge or authority of your petitioner, which cotton the said railroad company alleges was destroyed by the military forces of the United States in the city of Atlanta, Georgia.

Your petitioner further shows that said suit is still pending and undetermined in said circuit court of Hamilton County, Tennessee, and that the matter in controversy in said suit, exclusive of costs, exceeds the sum of five hundred dollars, and that at the time of the commencement of said suit your petitioner was and still is a citizen of McMinn County,
Tennessee, and the deft., the said railroad company, then and still
81 has its principal office in the city of Atlanta, Georgia, and was then and now is a citizen of the State of Georgia. And your petitioner further showeth unto your honor, that he has reason to believe and does believe that, from prejudice against his said claim, he cannot obtain justice in said suit in the State courts. And your petitioner would further show, that said suit was commenced in a State court against a railroad company as common carrier for damages for loss, conversion, or destruction of a lot of cotton delivered to said railroad company, and said loss was occasioned by the forces of the United States or by an officer in command of said forces in the late rebellion, and your petitioner therefore prays that said suit may be removed, under the provisions of the act of Congress passed on the 22d January, 1869, and other previous acts of Congress in this behalf, from said circuit court into the United States circuit court for the sixth circuit, and district of Eastern Tennessee, at Knoxville. And your petitioner here offers good and sufficient security for entering in said United States court, on the first day of the next term thereof, with copies of all process, pleadings, depositions, testimony, and other proceedings in the cause, and prosecuting said suit as required by law; and as in duty bound your petitioner will ever pray.

J. H. HURST, SR.

STATE OF TENNESSEE,
McMinn County:

82 This day personally appeared before me, J. H. McGill, John L. Hurst, the petitioner in the foregoing petition and made oath

that the facts stated in the said petition are true to the best of his knowledge, information and belief.

J. L. HURST.

Sworn to and subscribed before me the 6th day of November, 1873.
J. H. McGILL, *J. P.*

Bond to prosecute.—Filed Nov. 12, 1873.

STATE OF TENNESSEE,
Hamilton County:

Circuit court, Nov. term, 1873.

We, John L. Hurst, as principal, and J. H. McGill, as security, acknowledge ourselves indebted to the Western & Atlantic Railroad Company of the State of Georgia, in the penal sum of five hundred dollars, for which, well and truly to be made, we bind ourselves, our heirs, and legal representatives, signed, sealed, and delivered this 6th day of November, 1873.

The condition of the above obligation is such, that whereas the said John L. Hurst has heretofore brought a suit in the circuit court of Hamilton County, Tennessee, against said railroad company, of the State of Georgia, for fifty thousand dollars as damages, which is now pending and undetermined in said court: And whereas, the said John L. Hurst has filed a petition in said cause, in conformity with the acts of Congress in such cases provided, for the removal of said cause from said circuit court of Hamilton County, Tennessee, to the next circuit court of
83 the United States, to be held for the eastern district of Tennessee, at Knoxville:

Now, if the said John L. Hurst shall enter, in said United States court, on the first day of the next term thereof, copies of all process, pleadings, depositions, testimony, and other proceedings in said suit, and prosecute said suit, and do all such acts in relation thereto as are required to be done upon the removal of a suit into the United States circuit court under the acts of Congress, or upon failure thereof pay all such costs and damages as may be adjudged against him, and in that event the foregoing obligation shall become null and void; otherwise to remain in full force and effect.

J. L. HURST. [SEAL.]
J. H. McGILL. [SEAL.]

Signed, sealed, & delivered in presence of us, day & date above—
J. A. GOULD & JOSEPH NEIL.

MONDAY, *November* 24, 1873.

Order court transferring cause U. S. court.

On this the 24th day of November, 1873, came the parties by attorneys, and both parties waived the incompetency now sitting, and agree that he shall act on the plaintiff's motion heretofore entered at the present term of the court to remove this cause from this court to the next term of the circuit court of the United States for the sixth circuit and district of Eastern Tennessee, at Knoxville, according to an act of

Congress passed on the 22d day of January, 1869, and previous acts of Congress in this behalf, and the motion having been allowed to
84 be entered on a former day of the present term of this court, and the plaintiff having been permitted to file his petition and bond, with good security thereto, for entering into said United States court aforesaid on the first day of the next term thereof; and the court being satisfied from said petition and the record that the matter in dispute between the parties in this cause exceeds the sum of five hundred dollars, exclusive of the costs, and that petitioner has a right to have his cause removed to said circuit court of the United States, and have the prayer of his petition granted, and that his bond and security is good and sufficient:

It is, therefore, ordered, adjudged, and decreed by the court that this cause be removed from this court and its jurisdiction unto the next term of the United States circuit court for the sixth circuit and district of Eastern Tennessee, to be held at Knoxville, Tennessee, on the second Monday of January, 1874, and within its jurisdiction according to the acts of Congress in such cases made and provided, and that petition enter in said court on the first day of the next term aforesaid, with copies of all process, pleadings, depositions, testimony, papers, and other proceedings in the cause, and prosecute said suit in that court as required by law. And all that part of the order made at the present term of this court continuing the said motion until the next term
85 of this court, is hereby in all things rescinded and set aside & for nothing held, and the motion, by consent of both parties, now acted upon, and the cause removed by order of the court as aforesaid.

It is therefore ordered by the court that the former security be discharged as by act of Congress provided, and that the clerk of this court shall make out and certify a full, true, & perfect transcript, and copies of all process, papers, & records, deposition, and testimony, and of all orders and proceedings in the cause of every kind, together with a certified copy of this order and decree, including said petition and bond, and transmit the same to the clerk of the said circuit court of the United States at Knoxville, Tennessee, before the next term thereof aforesaid, and that this court thereafter hereafter cease to have further or other jurisdiction of the said cause unless the same for any cause be sent back to this court to be further dealt with in this court.

STATE OF TENNESSEE, *Hamilton County:*

I, Chas. W. Vinson, clerk of the circuit court in and for the county an' State aforesaid, do certify the foregoing to be a true and perfect transcript of all the papers, records, depositions, testimony, and proceedings in the case of John L. Hurst against The Western and Atlantic Railroad, of the State of Georgia, a' now on file and of record in said court.

Witness my hand and seal of said court at office in Chattanooga the 2d day of January, 1874.

[SEAL.] C. W. VINSON, *Clerk.*

(Endorsed:) No. 545. John L. Hurst vs. The Western & Atlantic R. R. Co., of the State of Georgia, filed January 12, 1874. H. M. Aiken, clerk.

Affidavit of John Baxter.

Circuit court of the United States in and for the eastern district of Tennessee.

JOHN L. HURST
vs.
THE WESTERN ATLANTIC RAILROAD, OF GEORGIA.

JOHN BAXTER, attorney for defendant in this suit, being duly sworn, deposes and says that the defendant sued in this case is not a foreign corporation or citizen of Georgia. The Western & Atlantic
86 Railroad is a railroad extending from Atlanta, Georgia, to Chattanooga, Tennessee, and was built by the State of Georgia, in pursuance of an act of the Georgia legislature, but the State of Georgia possessed no right, until it obtained permission from the general assembly of the State of Tennessee to do so, to extend its road into Tennessee. And hence the State of Georgia applied for and duly obtained permission to extend its road from its own line, a distance of about twelve miles, to Chattanooga, in the State of Tennessee. In Georgia it is not a corporation at all, but simply a railroad belonging to and controlled, managed, and built by authority of the State of Georgia. But under the statute of Tennessee which authorized the State of Georgia to extend said road from the Georgia line to Chattanooga, Tennessee, and amendments thereto to which reference is made, the supreme court of Tennessee has held that it was a corporation in Tennessee, while it is true that it is a corporation in which the State of Georgia is the only stockholder, and that portion of the road in Tennessee has been controlled by officers and agents appointed by the State of Georgia the same as a body politic & corporate *so by* by authority of the statute aforesaid and the amendments thereto of the State of Tennessee; and this affiant further swears that it was upon the agent of this Tennessee corporation that the process was served, and that it is the Tennessee corporation that is defendant in this suit.

JNO. BAXTER.

87 Subscribed and sworn to before January 14, 1874.
H. M. AIKEN, *Clerk.*

(Endorsed:) No. 545. John L. Hurst vs. The W. & A. R. R., of Georgia. Affidavit of John Baxter. Filed Jan'y 14, 1874. H. M. Aiken, clerk.

Be it remembered that, at a circuit court of the United States began and held for the eastern district of Tennessee, at the court-house in Knoxville, within said district, upon the second Monday, it being the 12th day of January, 1874, the following proceeding was had, to wit:

WEDNESDAY MORNING, *January* 14, 1874.

Court met pursuant to adjournment; present and presiding, the honorable Connally F. Trigg, judge of the U. S. district court for the districts of Tennessee.

JOHN L. HURST
vs.
THE WESTERN & ATLANTIC R. R., STATE OF Georgia. } No. 545.

Came the defendant, by attorney, and enters a motion to dismiss this

cause and remand the same to the circuit court of Hamilton County, Tennessee, from which it was removed.

And afterward at the said January term, 1874, of said court, the following proceeding was had, viz:

88 FRIDAY MORNING, *January* 16, 1874.

Court met pursuant to adjournment; present and presiding the honorable Connally F. Trigg, judge of the U. S. district court for the districts of Tennessee.

THE UNITED STATES
vs.
THE WESTERN & ATLANTIC R. R. CO., OF Georgia. } No. 545.

The motion heretofore entered in this cause to dismiss and remand the same to the circuit court of Hamilton County, from whence it was removed, coming on for argument; and argument of counsel being heard thereon, and the court being of opinion that it has no jurisdiction of this cause, it is considered by the court that said motion be sustained, that this cause be dismissed & remanded, and that the defendant go hence and recover of the plaintiff and J. H. McGill, his security of record, the costs accrued in this court, for which execution is awarded.

Citation.

UNITED STATES OF AMERICA, *ss:*

To the Western & Atlantic Railroad Company, of the State of Georgia, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be held at Washington on the second Monday of October next, pursuant to a writ of error filed in the
89 clerk's office of the circuit court of the United States for the eastern district of Tennessee, wherein John L. Hurst is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment in the said court of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Connally F. Trigg, one of the judges for the eastern district of Tennessee, this 16th day of March, in the year of our Lord one thousand eight hundred and seventy-four.

CONNALLY F. TRIGG, *Judge, &c.*

(Endorsed:) On this 16' day of June, in the year of our Lord one thousand eight hundred and seventy-four, personally appeared S. P. Evans, marshal of the eastern district of Tennessee, before me, H. M. Aiken, United States commissioner, and made oath that he served the foregoing citation by delivering a true copy thereof to John Baxter, esq., the attorney of record of the defendant in error, on this day.

S. P. EVANS,
U. S. Marshal.

Sworn to and subscribed before me this day of June, 1874.

H. M. AIKEN,
U. S. Comr.

(Endorsed:) Citation. John L. Hurst vs. The Western & Atlantic R. R. Co., of Georgia. Filed March 16, 1874. H. M. Aiken, clerk.

Bond.

Know all men by these presents that we, John L. Hurst and J.
90 H. McGill, are held and firmly bound unto The Western & Atlantic Railroad Company of the State of Georgia, in the sum of five hundred dollars, to be paid to the said Western & Atlantic Railroad Company, of the State of Georgia, its certain attorney or assigns, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this 16' day of March, 1874.

Whereas the above-named John L. Hurst hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered by the circuit for the eastern district of Tennessee, at the January term thereof, 1874, in the case of John L. Hurst against The Western & Atlantic Railroad Co. of the State of Georgia, dismissing the said cause, which had been removed from the circuit court of Hamilton County, Tennessee, (a State court within their said eastern district of Tennessee,) and rendering judgment against said Hurst and his surety in the same for the removal, for the costs accrued in said circuit court for the eastern district of Tennessee:

Now, therefore, the condition of this obligation is such, that if the above-named John L. Hurst shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make his plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

JOHN L. HURST. [SEAL.]
J. H. McGILL. [SEAL.]

In presence of—
H. M. AIKEN.
Approved:

CONNALLY F. TRIGG,
Judge, &c.

91 (Endorsed:) Bond for writ of error. John L. Hurst vs. The Western & Atlantic Railroad Co. Filed March 16, 1874. H. M. Aiken, clerk.

Writ of error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the United States circuit court for the eastern district of Tennessee, greeting:

Because, in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said circuit court, before you, between John L. Hurst & The Western & Atlantic Railroad Company, of the State of Georgia, a manifest error hath happened to the great damage of the said John L. Hurst, as by his complaint appears, we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties afores'd in this behalf, do command you, if judgment be therein given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid with

all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at Washington, on the 2d Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and customs of the United States should be done.

92 Witness the honorable Morrison R. Waite, Chief-Justice of the said Supreme Court, the second Monday of October, 1873.

H. M. AIKEN,
Clerk Circuit Court of the U. S.
for Eastern District of Tennessee.

(Endorsed :) Writ of error. John L. Hurst vs. The Western & Atlantic R. R. Co. Filed March 16, 1874. H. M. Aiken, clerk.

EASTERN DISTRICT OF TENNESSEE, *ss :*

I, H. M. Aiken, clerk of the United States circuit court for said district, do hereby certify that the above and foregoing is a full, true, and perfect copy of the record and proceedings (except the subpœnas) in the cause of John L. Hurst vs. The Western & Atlantic Railroad Company of the State of Georgia, as the same appear of record and on file in my office.

Given under my hand and the seal of said court at office in Knoxville, this 22d day of June, 1874.

[SEAL.] H. M. AIKEN, *Clerk.*

(Indorsement on cover :) No. 230. John L. Hurst, plaintiff in error, vs. The Western and Atlantic Railroad Company. E. Tennessee C. C. U. S. Filed 24th August, 1874.

IN THE

SUPREME COURT

OF THE

UNITED STATES

JOHN L. HURST,

VERSUS

Western & Atlantic Railroad

OF GEORGIA.

Brief and Arguementof J. H. GAUT,

For the Plaintiff in error

"NEWS" JOB PRINTING DEPARTMENT, ATHENS, TENNESSEE.

Assignment of errors.
The error complained of is that the cause having been properly and legally removed from the State Court to the Federal court, was upon defendants motion improperly remanded to the State Court for trial

JOHN L. HURST,

VERSUS

Western & Atlantic Railroad

OF GEORGIA.

John L. Hurst instituted this action in the law court at Chattanooga, Hamilton county, Tennessee, for the conversion, and consequent destruction, of one hundred and eighty-six (186) bales of cotton by the defendant, on the 3d day of May, 1862. The Plaintiff had the cotton stored in a ware house in Chattanooga, there to remain until it could be shipped to him at Athens, Tennessee, on the line of the East Tennessee and Georgia railroad. But on the 3d day of May, 1862, the defendant, upon the instruction of Gen. Ledbetter, then Confederate commandant of that post, took and shipped off the plaintiff's cotton, on their road, to Atlanta, Georgia, without his order, knowledge, or consent, where it was burnt up and destroyed.

The defendant is a corporation, created under and by an Act of the General Assembly of the State of Georgia, and it belongs to and is exclusively controlled by the State of Georgia, and has its chief office in Atlanta, Georgia. In other words, the State of Georgia descended from that of a sovereign State to that of a business corporation, under the name, style, and description of "The Western and Atlantic Railroad of Georgia," and she extended her line of road to the Tennessee river, at Chattanooga, Tennessee; and process was served upon her agent at Chattanooga, Tennessee, under the laws of Tennessee, where the action was brought.

In Railway Company vs Whitten's administrator (13 Wallace, 270), held by this court—Mr. Justice Field delivering the opinion—"that although a corporation, being an artificial body created by legislative power, is not a citizen within the several provisions of the constitution; yet it has been held, and it must now be regarded as settled law, that where rights of action are to be enforced, it will be considered as a citizen of the State where it was created, within the clause extending the judicial power of the United States to controversies between citizens of different States. (Paul vs Virginia; 8 Wallace, 177.) The defendant, therefore, must be regarded for the purposes of this action as a citizen of the State of Georgia. Upon that ground the plaintiff removed this cause from the State court to the Federal court, because he could not get and obtain justice in the State court, from the fact that the plaintiff was loyal to the Government of the United States, and because the defendant lent its active aid, to assist and encourage those in rebellion thereto, and in doing so, converted and destroyed the plaintiff's property, and used it inconsistent to the rights of the plaintiff, to deprive him of its use, and consequently the State courts were desirous to sustain the acts of those in rebellion, although at the sacrifice of the plaintiff's rights; and hence such prejudice existed in the State courts that

justice could not be obtained, and hence the removal. It may here be remarked that the facts in the record will clearly demonstrate the proposition that the plaintiff ought justly and legally to have just compensation for his property, so wrongfully and unlawfully taken from him by the defendant.

The cause was dismissed in the circuit court of the United States on motion, for the want of jurisdiction, and the plaintiff appealed to this court, or rather the defendant's motion to remand was sustained. The question of jurisdiction in that court to hear and determine the cause, depends upon the right of the plaintiff to remove the cause from the State court to that court under the several acts of Congress passed upon the subject.

The act of March 3d, 1863, section 5, provides: "If any suit or prosecution, civil or criminal, has been or shall be commenced in any State court against any officer, civil or military, or against any other person, for any arrest or imprisonment, or other trespass or wrong done or committed, or any act omitted to be done at any time during the present rebellion, by virtue or under color of any authority derived from or exercised by the President of the United States or any act of Congress, the defendant shall have the right of removing the cause by petition into the circuit court of the United States," &c. (An act of March 3d, 1863, section 5, volume 1, of Abbott's practice, page 82.)

The act of March 2d, 1867, amends the act of July 27th, 1866, as follows: "That where a suit is now pending, or may hereafter be brought in any State court, in which there is a controvery between a citizen of the State in which the suit is brought and a citizen of another State, and the matter in dispute exceeds the sum of five hundred dollars ($500), exclusive of costs, such citizen of another State, *whether he be plaintiff or defendant*, if he will make and file, in such State court, an affidavit, stating that he has reason to, and

does, believe that from local prejudice or local influence he will not be able to obtain justice in such State court, may *at any time* before the final hearing or trial of his suit file his petition in such State court for the removal of the suit into the next circuit court of the United States," &c. (See act of 1857. 1 Abbott's practice 122. All the acts on the subject in 1 vol. of Abbott's pr. 92 and note 1. Revised Statutes of U. S., p 113, sec. 639)

It will be observed that the act of 1867 only provides that the citizen of another State, whether he be plaintiff or defendant, may remove the cause from the State to the Federal court. But time and experience show that much litigation had been commenced in the rebel States against parties, firms and corporations for damages occasioned by them while acting in hostility to the Government of the United States during the late rebellion. And suits had been brought against officers and soldiers of the United States for damages while they were suppressing the rebellion, and on the one hand the local prejudices were such that those suing such firms, railway companies, and corporations for damages actually committed by them, as in the present case, while they were thus aiding and abetting the rebellion, that the plaintiffs in such cases could not get justice in the State courts. And in like manner, and for the same reason, it often occurred that officers and soldiers of the United States, when sued for acts done or omitted to be done during the late rebellion, could not get justice in the State courts.

In such cases it was the policy of the Government of the United States to grant leave to parties litigating to remove such cases from the State to the Federal courts, to the end that justice may be obtained. This court have holden, that the Southern Confederacy was neither a government *de jure* nor a government *de facto*, but a base rebellion from its uprising to its downfall, and its pretended Confederate courts martial were mere trespasses when they violated

the rights of persons or property. (Hickman vs. Jones, et als. 9 Wallace, 197.)

Instances of a contrary opinion of the courts in the rebel States are numerous. It was evidently the policy of the United States Government to allow a removal of all such questions from the State to the National courts. And hence Congress passed the act of January 22d, 1869, in the following words: "That the provisions of an act entitled 'an act relating to habeas corpus and regulating judical proceedings in certain cases,' approved March 3d, 1863, so far as the same relates to the *removal of causes from the State to the Federal Courts*, be and the same is hereby declared to extend to any suit or action at law or prosecution, civil or criminal, which has been or shall be commenced in any State court against the owner or owners of any ship or vessel, or against any railway, or of any line of transportion, firm, or corporation, engaged in business as common carriers of goods, wares or merchandise whatever, which shall have been delivered to any such owner or owners of any ship, vessel, or any railway, or of any line of transportion, firm, or corporation, engaged in business as common carriers, *where such loss or damage shall have been occasioned by the acts of those engaged in hostility to the Government of the United States during the late rebellion;* or when such loss or damage shall have been occasioned by any of the forces of the United States, or by any officer in command of such forces." (See pamphlet acts of 1869, pp. 4 & 5. Statutes at large 267.)

It is manifest, as we think, from the language employed by said act of 1869, that it gives the right to either party, without regard to citizenship, to remove from the State to the Federal court any suit or action brought against any railroad company, line of transportation, firm, or corporation, engaged in business as common carriers, for loss or damage, when such loss or damage shall have

been occasioned by the acts of those engaged in hostility to the Government of the United States during the late rebellion. This, I insist, is the only fair construction to be given to that act. And it is precisely the question involved in the case at bar. Hurst, a citizen of Tennessee, sued in the State court the Western & Atlantic railroad, of Georgia, a corporation created by the General Assembly of the State of Georgia. The State became a corporation to do business as a common carrier, and the plaintiff's loss of his cotton was occasioned by the acts of the defendant and others engaged in hostility to the Government of tho United States during the late rebellion.

The 5th section of the act of 1863 has been declared constitutional, (Brightly's Digest, page 127, section 240), and there can be no doubt, we insist, that the act of 1869 is constitutional, and eminently wise in transferring all such questions as those enumerated to the National courts, that the ends of public justice shall not be defeated by the local prejudices known to exist throughout the length and breadth of the rebellious States. The plaintiff, Hurst, being a citizen of Tennessee, could not sue the defendant except in the State court. But if the damages sued for were occasioned by the defendant, as they were, while engaged in acts of hostility to the Government of the United States, by aiding and abetting those actually engaged in hostility to the Government of the United States, we think, under the act of 1869, he has the right to remove the cause into the Federal court. If he has no right to do so he is without remedy; because on account of actual prejudice against allowing him a just and legal right, because the same is adverse to such political views as they may entertain, growing out of the late war, and because of a desire and inclination by the State courts in the rebellious States to sustain any act of the Confederacy or its officers, he cannot recover a just compensation for his cotton in the

State courts, where such questions are involved, although it must be a conceded fact that it was wrongfully and unlawfully taken and converted by the defendant under unlawful orders. Surely it was not intended by the act of 1869 to give the rebel defendant the right to remove the cause to the Federal courts and not allow the loyal plaintiff the same right. It will not be supposed that a rebel defendant will ever have cause or inclination to ask for a removal of the cause to the Federal courts, because, in the rebellious States, he will always prefer to risk his law suit in the State court where the court is of his own political faith, and if the court be the least inclined to act in favor of either side, it will naturally be in favor of the rebel defendant with whom he will most naturally sympathize. Hurst was a loyal man to the Government of the United States, and well known to be such, as will appear from the record, and the policy of the rebel government, as it was called, was to disallow cotton to be shipped into East Tennessee, especially to loyal men, lest the yarns might be furnished to other loyal citizens, and thus aid them, and for that reason this cotton was unlawfully seized and run off and converted and destroyed by the defendant, and Hurst financially ruined by it. Surely under these circumstances it would be a hard construction to hold defendant, who was actually engaged in aiding and abetting the rebellion, and lending itself to the rebel authorities for that purpose, as in this case, could remove the cause to the Federal courts, from a State court, and yet disallow the loyal plaintiff to the Government of the United States the same right, under the fair meaning and intention of the act of 1869, we think that such construction was not meant or intended by Congress in the passage of that act. The act of 1869 is an extension and an amendment of the act of March 3d, 1863, and other former acts relative to the removal of causes from the State to the Federal courts, and we respectfully insist that by a fair construction of it that either party

may remove the cause to the Federal courts. It is the question involved in litigation and not that of citizenship, under the act of 1869 which extends and amends the provisions of the former acts, which gives the right of removal from the State to the Federal court, as we respectfully insist. At the time of the removal of this cause it was a case then pending in the State court at Chattanooga, and undisposed of, and it then stood regularly for trial in that court, and the cause was properly removed as we respectfully insist, and for this reason we insist, that the defendant's motion to remand was improperly sustained and ought to be reversed.

J. H. GAUT,

Attorney for Hurst.

Henry L. Cooper
of Counsel

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THE SUPREME COURT

OF THE UNITED STATES.

JOHN L. HURST, PLAINTIFF IN ERROR,

vs.

THE WESTERN & ATLANTIC RAILROAD OF GEORGIA.

No. 230.

Brief for Defendant in Error.

The only question in this case is one of jurisdiction, and depends on the following facts:

This Suit was brought in *the Law Court of Chattanooga Tennessee*, against the defendant, the Western and Atlantic Railroad of Georgia, which, according to the adjudications of the Georgia Courts, is not a corporation, but simply property of the State.—23rd Georgia Report, 436; 28th Ibid, 186; 34th Ibid, 424; and 37th Ibid, 240. But in Tennessee it is otherwise, the Courts of the latter State holding that under the Tennessee Statutes authorizing the construction of that part of said road, lying within her limits, the defendant was constituted a body politic and corporate, capable of sueing and being sued; and it

is on the authority of these decisions that this suit was begun and is now being prosecuted.

At the time plaintiff commenced his suit, he was and is yet a citizen of Tennessee, and the defendant a corporation, deriving its existence from a public law of said State, and thefore, in legal contemplation, both the plaintiff and defendant were and are still, citizens of Tennessee.—1st Black, 286.

But, notwithstanding these facts, the plaintiff applied for and obtained an order to transfer his suit from the State Court in which it was commenced, to the Circuit Court of the United States, for the Eastern District of Tennessee. After he had filed the record in the last named court, the presiding judge, on defendant's motion, dismissed and remanded the cause to the State tribunal; and it is to reverse this judgment that the plaintiff prosecutes his writ of error to this Court,

For this extraordinary application to transfer the litigation from the State to the Federal Court, he sets forth three several grounds, as follows: 1st, that he was a citizen of Tennessee, and the defendant a citizen of Georgia. 2d, that from prejudice, &c. against his claim, he could not, as he believed, obtain justice in the State Court; and 3d, "that his suit was commenced in the State Court against a railroad company, as a common carrier, for damages for loss, conversion or destruction of a lot of cotton, delivered to said railroad company," which "loss was occasioned by the forces of the United States, or by an officer in command of said forces," etc.

It is not often that one sees such a total misconception of legal principles as is exhibited in this case.

The plaintiff in the first ground assumed, proceeds upon a misconception of the facts as well as of the law. The defendant was not a citizen of Georgia. It derived its existence from a public law of the State of Tennesse, of which the Court will take judicial notice, and was, in consequence, a citizen of Tennessee.

But if the facts were otherwise, as the plaintiff in his petition for the removal of the cause alleges, it would afford no sufficient ground for the transfer of the suit from the State to the Federal Court. A *defendant*, a citizen of one State sued by a citizen of another State, in which the suit is brought, may, on proper and timely application, have the suit transferred to and tried by a Federal Court. But the plaintiff in this case is a citizen of Tennessee; he elected to bring his suit in a Court of his own State, and having made his election he is concluded by it, and he will not be permitted, when he discovers that he can not succeed in the Court of his first choice. to transfer the litigation to another and different Jurisdiction.

And his second ground is as wide of the mark as his first. The act of the 2nd of March, 1867, recognizes "local prejudices" as good cause for the removal of a certain class of cases from the State to the Federal Courts. But this right to remove is by said act conferred on "citizens of another State" than that in which the suit in the State Court is pending. Here the plaintiff is a citizen of Tennessee, the State in which his suit was brought, and the act referred to above and under which he seems to be proceeding, has no application to his case and confers no rights upon him whatever.

It is furthermore conceded that the act of the 22nd of January, 1869 amends the act of the 3rd of March 1863, so far as to extend the provisions of the last named act which relate to the removal of causes from the State to the Federal Courts, to "all suits against Railroad Companies" and other common carriers for losses "occasioned by any of the forces of the United States, or by any officer in the command of such forces," engaged in the prosecution of the late civil war for the suppression of the rebellion. The right to removal is, by this act, given to *the defendant.* But the plaintiff seeks, in this case, to reverse the object had in view by the Congress in the enactment of this statute, and make it an instrument of aggression instead of a weapon of defense; he seems to be struggling to acquire a *status* in a Federal Court not to protect himself under the national authority *against a liability* for acts of war done by the military arm in the prosecution of a war to suppress the rebellion, but to recover from the defendant for losses which he alleges were occasioned by the Federal army. A most singular perversion of the objects of a statute, and a most extraordinary position to be assumed and pressed upon the consideration of this august tribunal.

JNO. BAXTER,

Attorney for Defendant in Error.